

2-11-2011

# Oakes v. Boise Heart Clinic Physicians Clerk's Record Dckt. 38146

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/  
idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"Oakes v. Boise Heart Clinic Physicians Clerk's Record Dckt. 38146" (2011). *Idaho Supreme Court Records & Briefs*. 2844.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2844](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2844)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

---

DAVID F. OAKES, M.D.,  
PLAINTIFF-COUNTERDEFENDANT-APPELLANT,

VS.

BOISE HEART CLINIC PHYSICIANS, PLLC,  
DEFENDANT-COUNTERCLAIMANT-RESPONDENT.

---

*Appealed from the District Court of the Fourth Judicial  
District of the State of Idaho, in and for ADA County*

*Hon D. DUFF MCKEE, District Judge*

---

THOMAS A. BANDUCCI

*Attorney for Appellant*

---

KEELY E. DUKE

*Attorney for Respondent*

---

COPY

FILED - COPY

FEB 11 2011

SEE AUGMENTATION RECORD

38146

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID F. OAKES, M.D.,

Plaintiff-Counterdefendant-Appellant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant-Counterclaimant-Respondent.

Supreme Court Case No. 38146

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE D. DUFF MCKEE

THOMAS A. BANDUCCI

ATTORNEY FOR APPELLANT

BOISE, IDAHO

KEELY E. DUKE

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
REGISTER OF ACTIONS .....	3
COMPLAINT AND DEMAND FOR JURY TRIAL, FILED AUGUST 11, 2009.....	9
ANSWER AND COUNTERCLAIM, FILED SEPTEMBER 1, 2009.....	18
PLAINTIFF’S REPLY TO DEFENDANT’S COUNTERCLAIM, FILED SEPTEMBER 21, 2009 .....	32
PROTECTIVE ORDER, FILED NOVEMBER 19, 2009.....	38
AMENDED PROTECTIVE ORDER, FILED MARCH 26, 2010 .....	40
ORDER GRANTING STIPULATION TO AMEND SCHEDULING ORDER, FILED JUNE 25, 2010.....	42
ORDER RE DEFENDANT’S MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION AND FOR FEES AND COSTS, FILED JULY 22, 2010.....	44
ORDER ON MOTION TO COMPEL, FILED AUGUST 18, 2010.....	47
PRE-TRIAL MEMORANDUM, FILED AUGUST 26, 2010 .....	50
ORDER ALLOWING TELEPHONIC APPEARANCE AT PRE-TRIAL CONFERENCE, FILED AUGUST 31, 2010.....	52
JURY INSTRUCTIONS, FILED SEPTEMBER 21, 2010 .....	54
VERDICT, FILED SEPTEMBER 21, 2010.....	76
ORDER ON DEFENDANT’S MOTIONS IN LIMINE NUMBERS 1-7 AND PLAINTIFF’S MOTIONS IN LIMINE 1-3, FILED SEPTEMBER 22, 2010 .....	77
SUBMISSION OF PROPOSED JUDGMENT, FILED SEPTEMBER 27, 2010.....	81
MEMORANDUM IN SUPPORT OF TREBLE DAMAGES AND PREJUDGMENT INTEREST, FILED SEPTEMBER 27, 2010 .....	86
LETTER, DATED SEPTEMBER 28, 2010.....	92

**TABLE OF CONTENTS.....PAGE NO.**

DEFENDANT’S OPPOSITION TO PLAINTIFF’S MEMORANDUM IN SUPPORT OF TREBLE DAMAGES AND PREJUDGMENT INTEREST, FILED OCTOBER 1, 2010.....	93
JUDGMENT, FILED OCTOBER 4, 2010 .....	111
NOTICE OF APPEAL, FILED OCTOBER 12, 2010.....	113
REQUEST FOR ADDITIONS TO CLERK’S RECORD RE: NOTICE OF APPEAL, FILED OCTOBER 25, 2010.....	119
NOTICE OF TRANSCRIPT LODGED, FILED JANUARY 11, 2011 .....	122
CERTIFICATE OF EXHIBITS.....	123
CERTIFICATE OF SERVICE .....	126
CERTIFICATE TO RECORD .....	127

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

AMENDED PROTECTIVE ORDER, FILED MARCH 26, 2010 .....	40
ANSWER AND COUNTERCLAIM, FILED SEPTEMBER 1, 2009.....	18
CERTIFICATE OF EXHIBITS.....	123
CERTIFICATE OF SERVICE .....	126
CERTIFICATE TO RECORD .....	127
COMPLAINT AND DEMAND FOR JURY TRIAL, FILED AUGUST 11, 2009.....	9
DEFENDANT'S OPPOSITION TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF TREBLE DAMAGES AND PREJUDGMENT INTEREST, FILED OCTOBER 1, 2010.....	93
JUDGMENT, FILED OCTOBER 4, 2010 .....	111
JURY INSTRUCTIONS, FILED SEPTEMBER 21, 2010 .....	54
LETTER, DATED SEPTEMBER 28, 2010 .....	92
MEMORANDUM IN SUPPORT OF TREBLE DAMAGES AND PREJUDGMENT INTEREST, FILED SEPTEMBER 27, 2010 .....	86
NOTICE OF APPEAL, FILED OCTOBER 12, 2010.....	113
NOTICE OF TRANSCRIPT LODGED, FILED JANUARY 11, 2011 .....	122
ORDER ALLOWING TELEPHONIC APPEARANCE AT PRE-TRIAL CONFERENCE, FILED AUGUST 31, 2010.....	52
ORDER GRANTING STIPULATION TO AMEND SCHEDULING ORDER, FILED JUNE 25, 2010.....	42
ORDER ON DEFENDANT'S MOTIONS IN LIMINE NUMBERS 1-7 AND PLAINTIFF'S MOTIONS IN LIMINE 1-3, FILED SEPTEMBER 22, 2010 .....	77
ORDER ON MOTION TO COMPEL, FILED AUGUST 18, 2010.....	47
ORDER RE DEFENDANT'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION AND FOR FEES AND COSTS, FILED JULY 22, 2010 .....	44

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM, FILED SEPTEMBER 21, 2009 .....	32
PRE-TRIAL MEMORANDUM, FILED AUGUST 26, 2010 .....	50
PROTECTIVE ORDER, FILED NOVEMBER 19, 2009.....	38
REGISTER OF ACTIONS .....	3
REQUEST FOR ADDITIONS TO CLERK'S RECORD RE: NOTICE OF APPEAL, FILED OCTOBER 25, 2010.....	119
SUBMISSION OF PROPOSED JUDGMENT, FILED SEPTEMBER 27, 2010.....	81
VERDICT, FILED SEPTEMBER 21, 2010.....	76

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

Date	Code	User		Judge
8/11/2009	NCOC	CCAMESLC	New Case Filed - Other Claims	Ronald J. Wilper
	COMP	CCAMESLC	Complaint Filed	Ronald J. Wilper
	SMFI	CCAMESLC	Summons Filed	Ronald J. Wilper
8/14/2009	AFOS	MCBIEHKJ	Affidavit Of Service 8/12/09	Ronald J. Wilper
9/1/2009	ANSW	CCGARDAL	Answer and Counterclaim (Duke for boise Heart Clinic)	Ronald J. Wilper
	NODT	CCGARDAL	Notice Of Taking Deposition Duces Tecum of David F Oakes	Ronald J. Wilper
	NOSV	CCGARDAL	Notice Of Service	Ronald J. Wilper
9/14/2009	AMEN	CCWRIGRM	Amended Notice of Taking Deposition	Ronald J. Wilper
9/21/2009	REPL	MCBIEHKJ	Reply to Counterclaim	Ronald J. Wilper
9/25/2009	NOTC	DCJOHNSI	Notice of Status Conf	Ronald J. Wilper
	HRSC	DCJOHNSI	Hearing Scheduled (Status 10/27/2009 04:30 PM)	Ronald J. Wilper
10/27/2009	STIP	CCWRIGRM	Stipulation for Scheduling and Planning	Ronald J. Wilper
10/29/2009	HRSC	DCABBOSM	Hearing Scheduled (Jury Trial 09/15/2010 09:00 AM) 4 days	Ronald J. Wilper
	HRSC	DCABBOSM	Hearing Scheduled (Civil Pretrial Conference 09/07/2010 03:30 PM)	Ronald J. Wilper
	ORDR	DCABBOSM	Order Setting Proceedings and Trial	Ronald J. Wilper
11/6/2009	NOTS	CCWRIGRM	(2) Notice Of Service of Discovery Responses	Ronald J. Wilper
11/16/2009	STIP	CCWRIGRM	Stipulation for Protective Order	Ronald J. Wilper
11/19/2009	MISC	DCJOHNSI	Protective Order	Ronald J. Wilper
3/11/2010	NOTS	CKELLMA	Notice Of Service	Ronald J. Wilper
3/25/2010	STIP	MCBIEHKJ	Stipulation for Amended Protective Order	Ronald J. Wilper
3/26/2010	MISC	DCJOHNSI	Amended Protective Order	Ronald J. Wilper
5/12/2010	MOSJ	CCBOYIDR	Motion For Summary Judgment	Ronald J. Wilper
	AFFD	CCBOYIDR	Affidavit in Support of Motion for Summary Judgment	Ronald J. Wilper
			Document sealed	
	MEMO	CCBOYIDR	Memorandum in Support of Motion for Summary Judgment	Ronald J. Wilper
			Document sealed	
	NOHG	CCBOYIDR	Notice Of Hearing	Ronald J. Wilper
	HRSC	CCBOYIDR	Hearing Scheduled (Motion for Summary Judgment 06/09/2010 03:30 PM)	Ronald J. Wilper
5/21/2010	NOTS	CCWRIGRM	Notice Of Service	Ronald J. Wilper
5/26/2010	OPPO	CCWRIGRM	Opposition to Defendants Motion for Summary Judgment	Ronald J. Wilper
			Document sealed	
	AFFD	CCWRIGRM	Affidavit of Dara Labrum	Ronald J. Wilper
			Document sealed	

00003



David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

Date	Code	User	Judge
6/2/2010	RPLY	CCRANDJD	Reply to Plaintiffs Opposition to Motion for Summary Judgment Document sealed Ronald J. Wilper
6/9/2010	DCHH	CCNELSRF	Hearing result for Motion for Summary Judgment held on 06/09/2010 03:30 PM: District Court Hearing Held Court Reporter: Dianne Crumwell Number of Transcript Pages for this hearing estimated: less than 500 pages. Ronald J. Wilper
6/21/2010	NOSV	CCGARDAL	Notice Of Service Ronald J. Wilper
6/22/2010	STIP	CCGARDAL	Stipulation to Amend Scheduling Order Ronald J. Wilper
6/25/2010	ORDR	DCJOHNSI	Order Granting Stip to Amend Order Ronald J. Wilper
7/1/2010	MOTN	CCAMESLC	Motion to Compel Answers to Interrogatories and Responses to Requests for Production and for Attorney Fees and Costs Ronald J. Wilper
	AFSM	CCAMESLC	Affidavit In Support Of Motion to Compel Ronald J. Wilper
	MEMO	CCAMESLC	Memorandum in Support of Motion to Compel Ronald J. Wilper
	HRSC	CCAMESLC	Notice of Hearing (Motion to Compel 07/19/2010 03:00 PM) Ronald J. Wilper
7/12/2010	OPPO	CCMASTLW	Opposition to Motion to Compel (Filed Under Seal) Ronald J. Wilper
	AFFD	CCMASTLW	Affidavit of Dara Labrum in Opposition to Motion to Compel Ronald J. Wilper
7/16/2010	NOTS	CCSULLJA	Notice Of Service Ronald J. Wilper
7/19/2010	ORDR	DCJOHNSI	Order Denying Motion for Summary Judgment Document sealed Ronald J. Wilper
	DCHH	DCJOHNSI	Hearing result for Motion to Compel held on 07/19/2010 03:00 PM: District Court Hearing Held Court Reporter: p tardiff Number of Transcript Pages for this hearing estimated:50 Ronald J. Wilper
7/22/2010	ORDR	DCJOHNSI	Order re: Motion to Compel Ronald J. Wilper
7/27/2010	NOTS	CCSWEECE	Notice Of Service Ronald J. Wilper
7/29/2010	MOTN	CCMASTLW	Motion to Compel Ronald J. Wilper
	AFFD	CCMASTLW	Affidavit of Counsel Ronald J. Wilper
	MEMO	CCMASTLW	Memorandum in Support Document sealed Ronald J. Wilper
	NOHG	CCMASTLW	Notice Of Hearing Document sealed Ronald J. Wilper
7/30/2010	HRSC	CCMASTLW	Hearing Scheduled (Motion to Compel 08/16/2010 11:00 AM) Ronald J. Wilper
8/9/2010	NOTC	DCJOHNSI	Notice Resetting Pretrial Ronald J. Wilper
	CONT	DCJOHNSI	Continued (Civil Pretrial Conference 09/02/2010 03:00 PM) Ronald J. Wilper

00004

## ROA Report

Case: CV-OC-2009-15341 Current Judge: Ronald J. Wilper

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

Date	Code	User	Judge
8/9/2010	OPPO	CCHOLMEE	Opposition to Motion to Compel Document sealed Ronald J. Wilper
	AFFD	CCHOLMEE	Affidavit of Keely E Duke in Support of Motion Document sealed Ronald J. Wilper
8/16/2010	DCHH	DCJOHNSI	Hearing result for Motion to Compel held on 08/16/2010 11:00 AM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated:50 Ronald J. Wilper
	NOTS	CCLATICJ	Notice Of Service Ronald J. Wilper
8/17/2010	ACCP	CCSIMMSM	Acceptance Of Service (8-16-10) Ronald J. Wilper
	NOTS	CCCHILER	Notice Of Service Ronald J. Wilper
8/18/2010	ORDR	DCJOHNSI	Order on Motion to Compel Ronald J. Wilper
8/19/2010	MOTN	CCMASTLW	Defendant's Motions In Limine [1 - 7] Document sealed Ronald J. Wilper
	AFFD	CCMASTLW	Affidavit of James W. Smith, M.D. Document sealed Ronald J. Wilper
	AFFD	CCMASTLW	Affidavit of Counsel Document sealed Ronald J. Wilper
	MEMO	CCMASTLW	(7) Memorandum in Support Document sealed Ronald J. Wilper
	NOHG	CCMASTLW	Notice Of Hearing (09/02/10 @ 3:00 PM) Document sealed Ronald J. Wilper
	MOTN	CCCHILER	Plaintiff's Motions in Limine Ronald J. Wilper
	AFFD	CCCHILER	Affidavit of Counsel in Support of Plaintiff's Motions in Limine Document sealed Ronald J. Wilper
	MEMO	CCCHILER	Memorandum in Support of Plaintiff's Motions in Limine Document sealed Ronald J. Wilper
8/20/2010	NOTH	CCWRIGRM	Notice Of Hearing (09/02/10 @ 3:00pm) Ronald J. Wilper
8/26/2010	RSPS	CCSULLJA	Response to Defendant's Motion s in Limine 1-7 Document sealed Ronald J. Wilper
	AFCO	CCSULLJA	Affidavit Of Counsel in Support of Response to Defendant's Motions in Limine 1-7 Document sealed Ronald J. Wilper
	MEMO	CCSULLJA	Pre-Trial Memorandum Ronald J. Wilper
	DEWI	CCSIMMSM	Defendant/Counterclaimant's Witness List Ronald J. Wilper
	OPPO	CCSIMMSM	Defendant's Opposition to Plaintiff's Motions in Limine Ronald J. Wilper
	MEMO	CCSIMMSM	Defendant's Pretrial Memorandum Ronald J. Wilper
	DEEX	CCSIMMSM	Defendant/Counterclaimant's Trial Exhibit List Ronald J. Wilper
	NOTS	CCSWEECE	Notice Of Service Ronald J. Wilper

00005

## ROA Report

Case: CV-OC-2009-15341 Current Judge: Ronald J. Wilper

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

Date	Code	User	Judge
8/30/2010	MISC	CCHOLMEE	Amended Trial Exhibit List Document sealed Ronald J. Wilper
	MOTN	CCKINGAJ	Motion to Appear Telephonically at Pre-Trial Conference Ronald J. Wilper
	AFFD	CCCHILER	Affidavit of Kra Heikkila in Support of Defendant's Motion in Limine [1-7], Inclusive Document sealed Ronald J. Wilper
	RPLY	CCCHILER	Reply in Support of Defendant's Motions in Limine [1-7] Inclusive Document sealed Ronald J. Wilper
8/31/2010	ORDR	DCJOHNSI	Order to Allow PTC via Phone Ronald J. Wilper
	RPLY	CCSULLJA	Reply in Support of Plaintiff's Motions in Limine Document sealed Ronald J. Wilper
9/2/2010	MISC	CCLATICJ	Witness and Exhibit List Ronald J. Wilper
	MISC	CCLATICJ	Plaintiff's Proposed Jury Instructions Ronald J. Wilper
	DCHH	DCJOHNSI	Hearing result for Civil Pretrial Conference held on 09/02/2010 03:00 PM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated: Def's Mos/In Limine-50 Ronald J. Wilper
	CONT	DCJOHNSI	Continued (Jury Trial 09/15/2010 08:30 AM) 4 days D. Duff McKee
	MISC	CCWRIGRM	Defendants Proposed Special Verdict Form and Jury Instructions Ronald J. Wilper
9/10/2010	MISC	MCBIEHKJ	First Amended Witness and Exhibit List Ronald J. Wilper
9/13/2010	AMEN	CCJOYCCN	Second Amended Witness and Exhibit List Ronald J. Wilper
9/14/2010	NOTS	CCKINGAJ	Notice Of Service of Discovery Response Ronald J. Wilper
	DEEX	CCKINGAJ	Defendant/Counterclaimant's Second Amended Trial Exhibit List Ronald J. Wilper
	MOTN	CCWRIGRM	Plaintiffs Motion in Limine Concerning Defenants Exhibits 111-117 Ronald J. Wilper
9/15/2010	JTST	CCCHILER	Hearing result for Jury Trial held on 09/15/2010 08:30 AM: Jury Trial Started 4 days Court Reporter: Brooke Bohr; pages: less than 500 D. Duff McKee
9/16/2010	HRSC	CCNELSRF	Hearing Scheduled (Jury Trial 09/16/2010 09:00 AM) Day 2 Ronald J. Wilper
	DCHH	CCNELSRF	Hearing result for Jury Trial held on 09/16/2010 09:00 AM: District Court Hearing Held Court Reporter: Patty Terry Number of Transcript Pages for this hearing estimated: Less than 500 Day 2 Ronald J. Wilper

00006

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

Date	Code	User	Judge
9/17/2010	MOTN	CCNELSRF	Defendant's Motion In Limine Restricting Reference to , Evidence of, Or Testimony Regarding \$300,000 Payout from Boise Heart Clinic to it Partners
			Document sealed
	HRSC	CCNELSRF	Hearing Scheduled (Jury Trial 09/17/2010 09:00 AM) Day 3
	DCHH	CCNELSRF	Hearing result for Jury Trial held on 09/17/2010 09:00 AM: District Court Hearing Held Court Reporter: Roxanne Patchell Number of Transcript Pages for this hearing estimated: Less than 500 Day 3
9/20/2010	OBJC	CCNELSRF	Defendant's Objection to Plaintiff's Proposed Jury Instructions
	BREF	CCNELSRF	Bench Brief In Opposition to Plaintiffs's Motion for Directed Verdict on Defendant's Countclaim
	HRSC	CCNELSRF	Hearing Scheduled (Jury Trial 09/20/2010 09:00 AM) Day 3
	DCHH	CCNELSRF	Hearing result for Jury Trial held on 09/20/2010 09:00 AM: District Court Hearing Held Court Reporter: Patty Terry Number of Transcript Pages for this hearing estimated: Less than 500 Day 4
9/21/2010	BREF	CCNELSRF	Bench Brief in Support of Defendant's Motion for Directed Verdict
	MOTN	CCNELSRF	Defendant Motion to Amend the Pleadings Under IRCP 15(b)
	MEMO	CCNELSRF	Defendant Memorandum in Support of Motion to Amend the Pleadings Under IRCP 15(b)
	JRYI	CCNELSRF	Jury Instructions
	VERD	CCNELSRF	Verdict Form
	HRSC	CCNELSRF	Hearing Scheduled (Jury Trial 09/21/2010 09:00 AM) Day 5
	DCHH	CCNELSRF	Hearing result for Jury Trial held on 09/21/2010 09:00 AM: District Court Hearing Held Court Reporter: Roxanne Patchell Number of Transcript Pages for this hearing estimated: Less than 500 Day 5
9/22/2010	ORDR	DCJOHNSI	Order on Motions in Limine
9/27/2010	MISC	CCWRIGRM	Submission of Proposed Judgment
	MEMO	CCWRIGRM	Memorandum in Support of Treble Damages and Prejudgment Interest
10/1/2010	MISC	DCJOHNSI	Opposition to Memorandum supporting Damages and Prejudgment Interest
10/4/2010	JDMT	DCTYLENI	Judgment

Ronald J. Wilper

00007

Date: 1/6/2011

Time: 02:11 PM

Page 6 of 6

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

ROA Report

Case: CV-OC-2009-15341 Current Judge: Ronald J. Wilper

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

David F Oakes MD vs. Boise Heart Clinic Physicians PLLC

Date	Code	User		Judge
10/4/2010	CDIS	DCTYLENI	Civil Disposition entered for: Boise Heart Clinic Physicians PLLC, Defendant; Oakes, David F MD, Plaintiff. Filing date: 10/4/2010	Ronald J. Wilper
	STAT	DCTYLENI	STATUS CHANGED: Closed	Ronald J. Wilper
10/12/2010	APSC	CCHOLMEE	Appealed To The Supreme Court	Ronald J. Wilper
10/25/2010	RQST	CCMASTLW	Request for Additions to Clerk's Record re Notice of Appeal	Ronald J. Wilper

00008

ORIGINAL

Thomas A. Banducci (ISB No. 2453)  
tbanducci@bwslawgroup.com  
Brent S. Bastian (ISB No. 8071)  
bbastian@bwslawgroup.com  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock, Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455

Attorneys for Plaintiff

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
AUG 11 2009

AUG 11 2009

J. DAVID KAVANAGH, Clerk  
By: \_\_\_\_\_  
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS,  
PLLC,

Defendant.

Case No.

**CV 00 0915341**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

David F. Oakes, MD, for his complaint, alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff is an Idaho resident with a primary residence in Ada County, Idaho.
2. Defendant is an Idaho limited liability company, with a principal place of business in Boise, Idaho.
3. This Court has jurisdiction pursuant to Idaho Code § 5-514.
4. Venue is proper in Ada County pursuant to Idaho Code § 5-404.

## GENERAL ALLEGATIONS

5. Among other things, Defendant operates a medical clinic which offers cardiac services (sometimes referred to hereinafter as the “Clinic”).

6. Plaintiff was employed by Defendant from January of 2000 until approximately August of 2008 as a physician cardiologist, specializing in cardiology, cardiac electrophysiology, and interventional cardiology, among other things. Over this period of time, Plaintiff has entered into various employment arrangements with Defendant. On February 1, 2008 Plaintiff and Defendant entered into an employment agreement relative to services that would be provided by Plaintiff to patients of the clinic.

7. This employment agreement required Plaintiff to render cardiac services on behalf of Defendant. Defendant, in turn, agreed to pay Plaintiff for a percentage of the “adjusted gross charges” for medical services provided to patients by Plaintiff. According to the agreement, the “adjusted gross charges” were to be equal to the amounts “billed which have been adjusted for any contractual adjustments and uncollected amounts written off from such charges and from which charges relating to IVs, injections and nuclear medicine procedures relating to Medicare have been deducted.”

8. By its terms, the subject matter of this agreement only covered “income generated by the Physician” for medical services provided to patients “as a Physician” and “activities related thereto, such as consulting work.”

9. The agreement did not cover a program. Plaintiff participated in “Gainshare.” Gainshare is an industry-wide program offered by health care organizations—in this case Goodroe Healthcare and/or St. Luke’s Hospital—whereby those organizations give physicians a percentage share of certain reductions in the costs for patient care attributable in part to the physician’s efforts. Stated succinctly, Gainsharing rewards doctors for saving the hospitals in

which they work from unnecessary waste. As a result, this program was unrelated to the employment agreement, since Plaintiff was to be paid not for his services related to providing patient care as a Physician, but for using certain products and programs which saved the health-care institution (St. Luke's) significant money.

10. At the request of St. Luke's, Plaintiff agreed to implement certain cost-saving measures, for the benefit of St. Luke's, and St. Luke's in turn agreed to share with Plaintiff the savings it enjoyed as a result of Plaintiff's efforts. Defendant was well aware of this agreement and was agreeable to Plaintiff's participation in the Gainshare program. At all times Defendant acknowledged that Plaintiff was entitled to receive his share of the savings resulting from his participation in the Gainshare program.

11. Upon information and belief, in 2007-2008, Plaintiff generated significant savings in the Gainshare program.

12. On or around May 19, 2008, Plaintiff gave notice that he was resigning from Defendant. His last day was on or around August 1, 2008.

13. Shortly after his departure, Defendant paid Plaintiff his last paycheck based on the adjusted gross charges for medical services rendered to patients, pursuant to the employment agreement. However, because St. Luke's Hospital and/or Goodroe Healthcare had not distributed the Gainshare proceeds for 2007/2008, Defendant promised to pay Plaintiff for his revenue generation when the Gainshare payment was received by Defendant on Plaintiff's behalf. Defendant later received Gainshare payments for the amounts Plaintiff had earned under that arrangement, but Defendant chose to keep these funds—which it had done nothing to earn—for itself.

14. Plaintiff accordingly requested his fully-earned Gainshare amounts, or, alternatively, an accounting of the amounts Defendant was keeping.



15. Defendant, however, refused to provide any monies or even a Gainshare accounting – not because Plaintiff was not entitled to such payment – but because Defendant had accidentally paid Plaintiff too much in his final paycheck, and that therefore Plaintiff would not be receiving any of his already-earned Gainshare amounts. This was the first time Defendant had asserted this position, and was based on a wholesale write off of allegedly “uncollectable” gross charges for Plaintiff’s work during his final month’s work at the Clinic.

16. Prior to Plaintiff’s demand for the Gainshare amounts, Defendant had never suggested Plaintiff was paid too much, and the amount of these “readjustments” appeared to be calculated only as a sham offset to the amounts Defendant owed Plaintiff for the Gainshare amounts. Somewhat ironically, Defendant—who was apparently unable to provide an accounting of the Gainshare amounts—was able to quickly provide an “accounting” of the radical readjustment to Plaintiff’s gross charges.

17. But upon inspection, and upon information and belief, the amounts in that accounting are inaccurate. Upon information and belief, Defendant has received payment for many of the accounts receivable, which it wrote off in order to support its claim that Plaintiff was overpaid. Moreover, many “readjustments” were made long before Defendant would normally make such adjustments.

18. Defendant has made demand on Plaintiff for return of funds, based on its newly-asserted readjustment of the gross charges.

**COUNT I  
BREACH OF CONTRACT**

19. The allegations included in the preceding paragraphs are incorporated by reference and made a part hereof.

20. Plaintiff and Defendant entered into an agreement whereby Plaintiff would use

the cost-saving measures advocated by St. Luke's Hospital and/or Goodroe Healthcare, and Defendant, who was in turn benefitted by these measures, would pay Plaintiff for the portion of the Gainshare payments which he earned.

21. Defendant, however, failed to pay Plaintiff the compensation it owed him, breaching the terms of the contract.

22. As a direct and proximate result of this breach, Plaintiff has suffered damages in excess of the jurisdictional minimum of this Court. Plaintiff will establish the precise amount of damages according to proof at trial.

23. The above-described breaches of contract are not exhaustive. Plaintiff, on information and belief, alleges that there may be other breaches of this contract by Defendant.

**COUNT II  
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

24. The allegations included in preceding paragraphs are incorporated by reference and made a part hereof.

25. The acts of Defendant in failing to pay Plaintiff his share of the Gainshare amounts significantly impaired the benefits and rights of Plaintiff under an agreement between the parties to make such payments. As such, Defendant has breached the implied covenant of good faith and fair dealing.

26. The above-described breaches of the implied covenant of good faith and fair dealing are not exhaustive. Plaintiff, on information and belief, alleges that there may be other breaches of the covenant of good faith and fair dealing by Defendant.

27. As a direct and proximate result of Defendant's breaches of the implied covenant of good faith and fair dealing, Plaintiff has suffered damages in excess of the jurisdictional minimum of this Court. Plaintiff will establish the precise amount of damages according to

proof at trial.

**COUNT III**  
**VIOLATION OF THE IDAHO WAGE CLAIMS ACT**

28. The allegations included in the preceding paragraphs are incorporated by reference and made a part hereof.

29. By withholding the Gainshare amounts, Defendant has acted in contravention of the requirements of I.C. § 45-606, which is sometimes known as the Idaho Wage Claims Act.

30. Plaintiff is an "Employee" as that term is defined in I.C. § 45-601.

31. Defendant is an "Employer" as that term is defined in I.C. § 45-601.

32. The Gainshare amounts are "Wages" as that term is defined in I.C. § 45-601, and this lawsuit amounts to a "Wage Claim" as that term is defined in I.C. §§ 45-601 and 45-615.

33. As a result, pursuant to I.C. § 45-615, Plaintiff is entitled to the Gainshare amounts, his costs, attorneys' fees, and is also entitled to recover three times the amount of the Gainshare amounts as a penalty.

**COUNT IV**  
***QUANTUM MERUIT* AND UNJUST ENRICHMENT**

34. The allegations included in preceding paragraphs are incorporated by reference and made a part hereof.

35. Alternatively, if it is found that no formal contract existed as between Plaintiff and Defendant concerning the Gainshare amounts, Plaintiff is entitled to the Gainshare amounts under one or both of the theories of *quantum meruit* and unjust enrichment.

36. As explained above, Plaintiff has saved St. Luke's Hospital and/or Goodroe Healthcare certain money and St. Luke's Hospital and/or Goodroe Healthcare has paid a certain sum to Plaintiff through Defendant. Defendant, in turn, has kept that money for itself, refusing

to pay the reasonable value of those services to Plaintiff.

37. Defendant has been unduly enriched as a result of its choice to maintain the amounts rendered to it by Goodroe Healthcare for Plaintiff's services, instead of remitting it to Plaintiff. Defendant, in good conscience and equity, should remit those amounts to Plaintiff.

38. Plaintiff is accordingly entitled to collect the balance of the reasonable value of the Gainshare amounts under the equitable doctrines of unjust enrichment and/or *quantum meruit* in an amount to be determined at trial.

#### **COUNT V CONVERSION**

39. The allegations included in preceding paragraphs are incorporated by reference and made a part hereof.

40. Alternatively, Defendant has committed conversion.

41. Specifically, if it is found that no formal contract existed as between Plaintiff and Defendant concerning the Gainshare amounts, Plaintiff argues in the alternative that the Gainshare amounts generated by Plaintiff were owed to him by St. Luke's Hospital and/or Goodroe Healthcare, with Defendant acting as a mere pass-through entity for purposes of convenience.

42. By keeping such funds for its own use, then, Defendant has committed acts of dominion wrongfully asserted over Plaintiff's property in denial of or inconsistent with Plaintiff's rights. Plaintiff is entitled to a return of those amounts.

#### **COUNT VI REQUEST FOR DECLARATORY JUDGMENT**

43. Plaintiff also requests that this Court render a declaratory judgment.

44. The allegations included in the preceding paragraphs are incorporated by reference and made a part hereof.

45. As noted above, in response to a request for payment of the Gainshare amounts, Defendant has demanded a reimbursement of over \$29,000 due to certain “readjustments” it chose to make to Plaintiff’s gross charges.

46. Upon information and belief, many or all of these “readjustments” have been paid by the relevant patient or were written off in a manner inconsistent with Defendant’s policies or the general policies of the market in which Defendant operates. Plaintiff believes that once it can obtain sufficient documents and testimony from Defendant and Defendant’s employees, it will be revealed that many—if not all—of the “readjustments” will prove unfounded, and perhaps knowingly so.

47. Plaintiff accordingly asks for a declaration from this Court stating the following:

- a. That it does not owe any money to Defendant due to Defendant’s *post facto* “readjustments.”
- b. That attempting to charge these false “readjustments” to Plaintiff constitutes a breach of good faith and fair dealing under the employment Agreement.
- c. By paying Plaintiff a final paycheck Defendant has waived any claim for return of allegedly “overpaid compensation.”

#### **ATTORNEY FEES**

Plaintiff has been required to obtain the assistance of counsel to assist in the prosecution of this matter, and has retained the services of Banducci Woodard Schwartzman PLLC, and has agreed to pay said attorneys a reasonable fee. Plaintiff is entitled to recover its reasonable costs and attorney fees incurred in the prosecution of this matter pursuant to Rule 54, Idaho Rules of Civil Procedure, and/or Idaho Code Sections 12-120, 12-121, and 45-615, or other applicable law.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all issues pursuant to Idaho Rule of Civil Procedure 38(b).

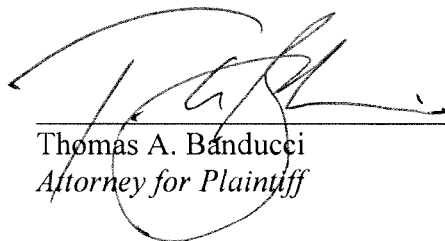
**PRAYER**

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in its favor and against Defendant as follows:

1. Awarding damages in an amount to be proven at trial, including treble damages;
2. Granting declaratory judgment in favor of Plaintiff stating:
  - a. That Plaintiff does not owe any money to Defendant due to Defendant's *post facto* "readjustments" of the gross charges generated by Plaintiff;
  - b. That attempting to charge these false "readjustments" to Plaintiff constitutes a breach of good faith and fair dealing under the employment Agreement;
  - c. That by paying Plaintiff a final paycheck Defendant has waived any claim for return of allegedly "overpaid compensation."
3. Awarding Plaintiff its reasonable costs and expenses;
4. Awarding Plaintiff its reasonable attorneys' fees; and
5. Granting Plaintiff such other and further relief, at law and in equity, as this Court deems just and proper.

DATED this 11<sup>th</sup> day of August, 2009.

BANDUCCI WOODARD SCHWARTZMAN PLLC

  
\_\_\_\_\_  
Thomas A. Banducci  
*Attorney for Plaintiff*

SEP 01 2009

J. DAVID NAVARRO, CLERK  
By A. GARDEN  
DEPUTY

Keely E. Duke  
ISB #6044; [ked@hallfarley.com](mailto:ked@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\4\4-538\Answer and Counterclaim.doc

Attorneys for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**ANSWER AND COUNTERCLAIM**

Defendant, Boise Heart Clinic Physicians, PLLC ("Boise Heart Clinic"), by and through its attorneys of record, the law firm of Hall, Farley, Oberrecht & Blanton, P.A., files this Answer to plaintiff's Complaint and Demand for Jury Trial on file herein as follows:

**ANSWER**

1. Defendant denies each and every allegation contained in plaintiff's Complaint not herein specifically admitted. Defendant reserves the right to amend this and any other answer or

denial stated herein once it has had an opportunity to complete discovery regarding the allegations contained in plaintiff's Complaint.

2. Defendant admits paragraphs 1 and 2 of plaintiff's Complaint.

3. Answering paragraphs 3 and 4 of plaintiff's Complaint which state allegations regarding the propriety of jurisdiction and venue in this matter, defendant admits that this Court has jurisdiction over properly pled matters; however, in making this acknowledgment, defendant does not admit that any such matters were properly pled in plaintiff's Complaint, or that the facts set forth in plaintiff's Complaint actually justify the exercise of such jurisdiction. To the extent this Court has jurisdiction over these matters, venue is proper.

4. Defendant admits paragraph 5 of plaintiff's Complaint.

5. In answer to paragraph 6 of plaintiff's Complaint, defendant admits only that defendant employed plaintiff between January of 2000 and July 31, 2008 as a physician, and that during the course of plaintiff's employment with defendant, plaintiff and defendant have entered into various employment contracts. Defendant further admits that on or about February 1, 2008, plaintiff and defendant entered into another Employment Contract which had an effective date of January 1, 2008. The terms of the January 1, 2008 Employment Contract speaks for itself. Defendant denies the remaining allegations contained in paragraph 6, including all of plaintiff's characterizations contained therein.

6. In answer to paragraphs 7, 8 and 9 of plaintiff's Complaint, this paragraph appears to contain plaintiff's legal conclusions and factual assertions relating to the terms of plaintiff's January 1, 2008 Employment Contract, and defendant's Valueshare Gainsharing Program Agreement with St. Luke's Regional Medical Center, Ltd. To the extent this paragraph requires a response from defendant, defendant denies the accuracy of plaintiff's characterizations



and, instead, refers the Court to the written Employment Contract and the Gainshare Contract defendant had with St. Luke's Regional Medical Center, which speak for themselves. These agreements speak for themselves.

7. In answer to paragraph 10 of plaintiff's Complaint, defendant admits only that it was aware that plaintiff, during the course of his employment by defendant, was identified as a participating physician under the Valueshare Gainsharing Program Agreement. Defendant denies the remaining allegations contained in paragraph 10, including all of plaintiff's characterizations.

8. In answer to paragraph 11 of plaintiff's Complaint, defendant denies all of the allegations contained therein, including all of plaintiff's characterizations.

9. In answer to paragraph 12 of plaintiff's Complaint, defendant admits that on or about May 19, 2008, plaintiff provided defendant with notice that he was resigning from his employment with defendant. Defendant further admits that plaintiff's last day of employment with defendant was July 31, 2008. Defendant denies the remaining allegations contained in paragraph 12, including all of plaintiff's characterizations therein.

10. In answer to paragraph 13 of plaintiff's Complaint defendant admits that on or about August 5, 2008, defendant paid plaintiff his estimated wages for the final period of his employment, pursuant to the January 1, 2008 Employment Contract. Defendant also admits that it has retained the amounts received under the Valueshare Gainsharing Program Agreement with St. Luke's Regional Medical Center, Ltd. Defendant denies the remaining assertions contained in paragraph 13, including plaintiff's characterizations contained therein.

11. In answer to paragraph 14 of plaintiff's Complaint, defendant admits only that on or about January 30, 2008, plaintiff contacted defendant regarding Gainshare. Defendant also

admits that on or about May 5, 2009, counsel for plaintiff wrote defendant, and asserted an interest in the amounts paid to defendant pursuant to its agreement with St. Luke's Regional Medical Center regarding Gainshare. Defendant denies the remaining assertions contained in paragraph 14, including plaintiff's characterizations.

12. In answer to paragraph 15 of plaintiff's Complaint, defendant admits only that it has not paid plaintiff any monies received pursuant to the Valueshare Gainsharing Program Agreement because plaintiff is not entitled to such monies. Defendant denies the remaining allegations contained in paragraph 15, including plaintiff's characterizations contained therein.

13. In answer to paragraphs 16 and 17 of plaintiff's Complaint, defendant denies the allegations contained in paragraph 16 and 17, including plaintiff's characterizations.

14. In answer to paragraph 18 of plaintiff's Complaint, defendant admits only that it has made written demand on plaintiff for return of overpaid monies. Defendant denies the remaining allegations contained in paragraph 18, including plaintiff's characterizations.

**COUNT I**  
**BREACH OF CONTRACT**

15. In answer to paragraph 19 of plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, defendant reasserts and incorporates by this reference its prior responses to all such allegations.

16. In answer to paragraph 20 of plaintiff's Complaint, defendant denies the allegations contained therein, including plaintiff's characterizations.

17. In answer to paragraphs 21, 22 and 23 of plaintiff's Complaint, these paragraphs appear to contain plaintiff's legal conclusions, and to the extent a response is required thereto, defendant denies said allegations, including plaintiff's characterizations.

**COUNT II**  
**BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

18. In answer to paragraph 24 of plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, defendant reasserts and incorporates by this reference its prior responses to all such allegations.

19. In answer to paragraphs 25, 26 and 27 of plaintiff's Complaint, these paragraphs appear to contain plaintiff's legal conclusions, and to the extent a response is required thereto, defendant denies said allegations, including plaintiff's characterizations.

**COUNT III**  
**VIOLATION OF THE IDAHO WAGE CLAIMS ACT**

20. In answer to paragraph 28 of plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, defendant reasserts and incorporates by this reference its prior responses to all such allegations.

21. In answer to paragraph 29 of plaintiff's Complaint, defendant denies the allegations contained therein, including plaintiff's characterizations.

22. In answer to paragraphs 30, 31, 32 and 33 of plaintiff's Complaint, these paragraphs appear to contain plaintiff's legal conclusions, and to the extent a response is required thereto, defendant denies said allegations, including plaintiff's characterizations.

**COUNT IV**  
**QUANTUM MERUIT AND UNJUST ENRICHMENT**

23. In answer to paragraph 34 of plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, defendant reasserts and incorporates by this reference its prior responses to all such allegations.

24. In answer to paragraph 35 of plaintiff's Complaint, these paragraphs appear to contain plaintiff's legal conclusions, and to the extent a response is required thereto, defendant denies said allegations, including plaintiff's characterizations.

25. In answer to paragraph 36 of plaintiff's Complaint, defendant denies the allegations contained therein, including plaintiff's characterizations.

26. In answer to paragraphs 37 and 38 of plaintiff's Complaint, these paragraphs appear to contain plaintiff's legal conclusions, and to the extent a response is required thereto, defendant denies said allegations, including plaintiff's characterizations.

**COUNT V**  
**CONVERSION**

27. In answer to paragraph 39 of plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, defendant reasserts and incorporates by this reference its prior responses to all such allegations.

28. In answer to paragraphs 40, 41 and 42 of plaintiff's Complaint, these paragraphs appear to contain plaintiff's legal conclusions, and to the extent a response is required thereto, defendant denies said allegations, including plaintiff's characterizations.

**COUNT VI**  
**REQUEST FOR DECLARATORY JUDGMENT**

29. In answer to paragraph 43 of plaintiff's Complaint, this appears to contain part of plaintiff's prayer for relief in this matter, and to the extent any response is required thereto, defendant denies the allegations contained therein, denies that plaintiff has stated any valid cause of action, and denies that plaintiff is entitled to any of the relief requested therein.

30. In answer to paragraph 44 of plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, defendant reasserts and incorporates by this reference its prior responses to all such allegations.

31. In answer to paragraphs 45 and 46 of plaintiff's Complaint, defendant denies the allegations contained therein, including plaintiff's characterizations.

32. In answer to paragraph 47 of plaintiff's Complaint, this appears to contain a portion of plaintiff's claims for relief, as well as plaintiff's legal conclusions, and to the extent any answer is required thereto, defendant denies the allegations contained therein, including plaintiff's characterizations.

33. Plaintiff's Complaint contains plaintiff's demand for attorney fees, and defendant denies the allegations contained therein, denies that plaintiff has stated a right to recover his attorney fees, and denies that plaintiff is entitled to any of the relief requested therein.

34. Plaintiff's Complaint contains a demand for jury trial. Defendant agrees and accordingly demands, pursuant to Rule 38 of the Idaho Rules of Civil Procedure, a jury trial on all issues.

35. Plaintiff's Complaint contains what is commonly referred to as plaintiff's prayer for relief, and to the extent any response is required thereto, defendant denies the allegations contained therein, denies that plaintiff has stated any valid cause of action, and denies that plaintiff is entitled to any of the relief requested therein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

36. That defendant has not been able to engage in sufficient discovery to learn all of the facts and circumstances relating to the matters described in the plaintiff's Complaint, and

therefore requests the Court to permit defendant to amend its answer and assert additional defenses, or abandon affirmative defenses once discovery has been completed.

### **SECOND AFFIRMATIVE DEFENSE**

37. That the plaintiff's Complaint fails to state a cause of action against the defendant upon which relief can be granted, and should therefore be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

### **THIRD AFFIRMATIVE DEFENSE**

38. That some or all of the plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

### **FOURTH AFFIRMATIVE DEFENSE**

39. That some or all of plaintiff's claims are barred by the doctrine of failure of consideration.

### **FIFTH AFFIRMATIVE DEFENSE**

40. That some or all of the plaintiff's claims are barred by payment.

### **SIXTH AFFIRMATIVE DEFENSE**

41. That some or all of the plaintiff's claims are barred by the statute of frauds.

### **SEVENTH AFFIRMATIVE DEFENSE**

42. That some or all of the plaintiff's claims are barred by the applicable statute of limitations.

### **EIGHTH AFFIRMATIVE DEFENSE**

43. That the plaintiff has failed to act reasonably or to otherwise mitigate his damages, if any.

**NINTH AFFIRMATIVE DEFENSE**

44. That the plaintiff's cause of action for declaratory relief is improper at this time because plaintiff has stated a claim for damages in his complaint, and therefore has acknowledged that he has an adequate remedy at law.

**ATTORNEY FEES**

45. Defendant has been required to retain attorneys in order to defend this action, and is entitled to recover its reasonable attorney fees and costs pursuant to Rule 54 of the Idaho Rules of Civil Procedure and Idaho Code §§ 12-120 and 12-121.

WHEREFORE, defendant prays for judgment against the plaintiff as follows:

1. That the plaintiff's Complaint be dismissed with prejudice and that the plaintiff take nothing thereunder;
2. That the defendant be awarded its costs, including reasonable attorney fees, pursuant to Rule 54 of the Idaho Rules of Civil Procedure and Idaho Code §§ 12-120 and 12-121;
3. That judgment be entered in favor of defendant on all claims for relief; and,
4. For such other and further relief as the Court deems just an equitable under the circumstances.

**DEFENDANT'S COUNTERCLAIM FOR CONVERSATION**

Counterclaimant, Boise Heart Clinic Physicians, PLLC ("Boise Heart Clinic"), for its counterclaim against David F. Oakes, M.D. ("Counterdefendant"), complains and alleges as follows:

1. Boise Heart Clinic hereby realleges each and every paragraph to its Answer to Complaint set forth above, and incorporates the same by reference herein.

2. Jurisdiction is proper in this matter pursuant to Idaho Code § 5-514, and venue is proper in Ada County pursuant to Idaho Code § 5-504.

3. Boise Heart Clinic is a professional limited liability company organized under the laws of the State of Idaho, with its principal place of business in Boise, Idaho.

4. Counterdefendant is a resident of Ada County, Idaho.

5. Counterdefendant was an employee of Boise Heart Clinic from January of 2000 until July 31, 2008. During that period of time, counterdefendant entered into various employment contracts with Boise Heart Clinic. The last of these employment contracts had an effective date of January 1, 2008, and covered the time period of January 1, 2008 through counterdefendant's last day of employment on July 31, 2008.

6. The January 1, 2008 Employment Contract provided that for all services rendered by counterdefendant under the Employment Contract, Boise Heart Clinic would pay counterdefendant a salary equal to fifty percent (50%) of the adjusted gross charges generated by counterdefendant during the term of the Employment Contract. The Employment Contract further provided that his salary would be payable on a monthly basis, based upon the adjusted gross charges generated during the previous month. The Employment Contract further stated that the adjusted gross charges would equal the gross charges billed, which have been adjusted for any contractual adjustments and then collected amounts written off from such charges, and from which charges relating to IVs, injections and nuclear medicine procedures relating to Medicare have been deducted.

7. On or about May 19, 2008, counterdefendant provided Boise Heart Clinic with written notice that he intended to terminate his employment sixty (60) days later.



8. On or about August 5, 2008, Boise Heart Clinic paid counterdefendant his estimated salary based on the estimated adjusted gross charges generated by counterdefendant during the month of July of 2008.

9. Subsequent to the August 5, 2008 payment to counterdefendant, Boise Heart Clinic determined the actual adjusted gross charges generated by counterdefendant during the month of July, 2008, and determined that it had overpaid counterdefendant in the amount of Twenty Five Thousand Three Hundred Fifty-Eight Dollars and 58/100 (\$25,358.58).

10. Counterdefendant's January 1, 2008 Employment Contract also provided that Boise Heart clinic would reimburse counterdefendant up to a maximum of Five Thousand Dollars (\$5,000) per year for continuing education, professional journals, licenses and dues.

11. Prior to ending his employment, counterdefendant submitted a reimbursement request to Boise Heart Clinic in the amount of Eight Thousand Nine Hundred Fifty-One Dollars and 50/100 (\$8,951.50) for attending a medical conference. Boise Heart Clinic reimbursed counterdefendant the entire amount requested.

12. On or about March 6, 2009, Boise Heart Clinic sent counterdefendant a letter stating that Boise Heart Clinic had incorrectly overpaid counterdefendant wages in the amount of Twenty Five Thousand Three Hundred Fifty-Eight Dollars and 58/100 (\$25,358.58) and had incorrectly reimbursed plaintiff Three Thousand Nine Hundred Fifty-One and 51/100 (\$3,951.51) for continuing medical education expenses. Boise Heart Clinic demanded that counterdefendant return both overpayments which totaled Twenty Nine Thousand Three Hundred Ten Dollars and 08/100 (\$29,310.08).

13. Counterdefendant has refused to return the unearned monies demanded by Boise Heart Clinic.

14. As a result of counterdefendant's failure to return the unearned monies paid to him by Boise Heart Clinic, counterdefendant has permanently deprived Boise Heart clinic of monies that do not rightfully belong to counterdefendant.

15. As a result of counterdefendant's failure to return the unearned monies, Boise Heart Clinic has suffered damages in excess of Ten Thousand Dollars (\$10,000) to be proven with specificity at trial.

#### **REQUEST FOR ATTORNEY FEES**

Boise Heart Clinic has been required to retain the services of legal counsel and is entitled to recover its reasonable attorney fees and costs pursuant to Rule 54 of the Idaho Rules of Civil Procedure and Idaho Code §§ 12-120 and 12-121, which amount for prosecution of the Counterclaim should be \$1,500.00 if the Counterclaim is decided by default.

WHEREFORE, counterclaimant, Boise Heart Clinic Physicians, PLLC, requests judgment against counterdefendant as follows:

1. For damages according to proof resulting from counterdefendant's conversion of Boise Heart Clinic's assets, which damages are in excess of \$10,000.00;
2. For prejudgment interest on all damages recovered at the rate set forth within Idaho Code § 28-22-104;
3. For reasonable attorney fees, expenses and costs of suit incurred in pursuing this action, which amount for prosecution for the Counterclaim should be \$1,500.00 if the Counterclaim is decided by default; and,
4. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to the provisions of Rule 38(b) of the Idaho Rules of Civil Procedure, defendant/counterclaimant demands a trial by a jury of not less than twelve (12) persons for all issues so triable.

DATED this 1<sup>st</sup> day of September, 2009.

HALL, FARLEY, OBERRECHT &  
BLANTON, P.A.

By: 

Keely E. Duke – Of the Firm

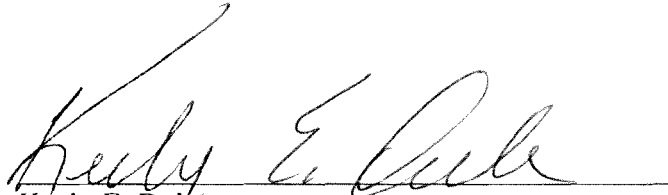
Attorneys for Defendant/Counterclaimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of September, 2009, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Brent S. Bastian  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702  
Fax No. 342-4455

- ☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
Keely E. Duke

**ORIGINAL**

Thomas A. Banducci (ISB No. 2459)  
 tbanducci@bwslawgroup.com  
 Brent S. Bastian (ISB No. 8071)  
 bbastian@bwslawgroup.com  
 BANDUCCI WOODARD SCHWARTZMAN PLLC  
 802 West Bannock, Suite 500  
 Boise, ID 83702  
 Telephone: (208) 342-4411  
 Facsimile: (208) 342-4455

NO. \_\_\_\_\_  
 AM. \_\_\_\_\_ FILED PM **2:54**

SEP 21 2009

J. DAVID NAVARRO, Clerk  
 By KATHY J. BIEHL  
 DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS,  
 PLLC,

Defendant.

Case No. CV OC 0915341

**PLAINTIFF'S REPLY TO  
 DEFENDANT'S COUNTERCLAIM**

By and through counsel, Plaintiff David F. Oakes ("Plaintiff") submits this Reply to the Counterclaim of Defendant Boise Heart Clinic Physicians, PLLC ("Defendant").

In replying to the Counterclaim, Plaintiff expressly reserves, in addition to the defenses set forth below, all defenses provided by law and equity. Moreover, Plaintiff states that his investigation of this matter is continuing, and as such, certain statements contained in this Reply may change in the future in light of additional or newly discovered information.

**GENERAL DENIAL**

Plaintiff denies any allegations in Defendant's Counterclaim not expressly admitted herein.

**SPECIFIC ALLEGATIONS**

1. To the extent a response to ¶ 1 of the Counterclaim is necessary, Plaintiff realleges and incorporates by reference herein the allegations made in his Complaint as a response as though fully set forth.
2. Plaintiff admits the allegations in ¶¶ 2-4 of the Counterclaim.
3. As to the allegations in ¶ 5 of the Counterclaim, Plaintiff admits that he was employed by Defendant from January of 2000 until approximately August 1, 2008 and that over this period of time, Plaintiff entered into various employment arrangements with Defendant. Plaintiff also admits that the parties entered into one particular agreement with an effective date of January 1, 2008 which was in effect at the time Plaintiff terminated the employment relationship. Plaintiff denies any and all remaining allegations and characterizations.
4. As to the allegations contained in ¶ 6 of the Counterclaim, Plaintiff states that the referenced document speaks for itself and that therefore no response is necessary. To the extent that a response is necessary, Plaintiff denies the allegations to the extent that they misstate or mischaracterize the language of the referenced document. Any and all remaining allegations and characterizations in this paragraph are denied.
5. As to the allegations in ¶ 7 of the Counterclaim, Plaintiff admits that he gave notice in conformance with § 11 of the agreement referenced in ¶ 5 of the Counterclaim.

6. As to the allegations contained in ¶¶ 8-9 of the Counterclaim, Plaintiff admits that Defendant paid him on or about August 5, 2008, but is without sufficient knowledge to know what Defendant based that payment on or what Defendant believes it has "subsequently" determined, and therefore deny the remaining allegations in these paragraphs on that basis. Any remaining allegations in these paragraphs are also denied.

7. As to the allegations contained in ¶ 10 of the Counterclaim, Plaintiff states that the referenced document speaks for itself and that therefore no response is necessary. To the extent that a response is necessary, Plaintiff denies the allegations to the extent that they misstate or mischaracterize the language of the referenced document. Plaintiff specifically denies any intimation in that paragraph that the \$5,000.00 provided in a given year had to be used only in that year. Any and all remaining allegations in this paragraph are denied.

8. As to the allegations contained in ¶ 11 of the Counterclaim, Plaintiff states that Defendant provided him \$8,951.50 for a medical conference which Defendant required Plaintiff to attend. Any remaining allegations and intimations in this paragraph are denied.

9. As to the allegations contained in ¶ 12 of the Counterclaim, Plaintiff states that he received a letter near the date referenced which stated that Defendant believed it had overpaid Plaintiff in the amounts referenced in ¶ 12. By so admitting, Plaintiff specifically does not also admit the truth of the allegations in that letter or in ¶ 12. In fact, any such allegations and all remaining allegations in that paragraph are denied.

10. As to the allegations contained in ¶ 13 of the Counterclaim, Plaintiff states that he refuses to pay Defendant \$29,310.08 because he does not owe that sum to Defendant. All remaining allegations in this paragraph are denied.

11. Plaintiff denies the allegations in ¶¶ 14-15 of the Counterclaim.

**ATTORNEYS' FEES AND PRAYER**

12. Defendant denies that Plaintiff is entitled to any of the relief set out in its request for attorneys' fees or in its prayer.

**AFFIRMATIVE DEFENSES**

The following affirmative defenses are pled in the alternative and in the conjunctive, where appropriate:

- a. Defendant fails to state a claim upon which relief can be granted.
- b. Defendant has moved for relief under the theory of "conversion." Plaintiff assumes that Defendant means to move under the theory of "conversion." To the extent Defendant does, in fact, intend to move for relief under a theory of "conversion," Plaintiff states that no such theory exists in Idaho law.
- c. Some or all of Defendant's alleged damages are barred by the doctrine of laches, waiver, and/or estoppel.
- d. Some or all of Defendant's alleged damages are barred by the doctrine of accord and satisfaction and/or have otherwise been released.
- e. Some or all of Defendant's alleged damages reasonably could have been avoided or mitigated by Defendant.
- f. Some or all of Defendant's alleged damages are barred by the doctrine of payment.
- g. Some or all of Defendant's alleged damages are barred by the doctrine of frustration of performance.



- h. Defendant has committed an antecedent breach excusing some or all of the performance of Plaintiff from the contract referenced in ¶ 5 of the Counterclaim.
- i. Some or all of Defendant's alleged damages are barred by its unclean hands.
- j. Some or all of the damages in Defendant's complaint have been the subject of payment by other persons or entities not parties to this lawsuit and to the extent payment has been received and accepted by Defendant, those items of damages have been paid and recovery in the present lawsuit would result in unjust enrichment to Defendant.

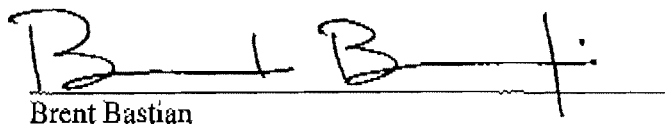
PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. That Defendant take nothing by way of its Counterclaim;
2. The relief already prayed for in Plaintiff's Complaint; and
3. For such other and further relief as the Court deems just and proper.

DATED this 21st day of September, 2009.

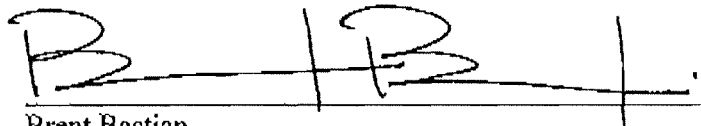
BANDUCCI WOODARD SCHWARTZMAN PLLC

  
Brent Bastian

### CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2009, I caused to be served a true and correct copy of the foregoing by mail, and addressed to the following:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

A handwritten signature in black ink, appearing to read 'B. Bastian', written over a horizontal line.

Brent Bastian  
*Attorneys For Plaintiff*

RECEIVED  
NOV 16 2009  
Ada County Clerk

NO. \_\_\_\_\_ FILED  
A.M. 10:30 P.M.

NOV 19 2009

J. DAVID NAVARRO, Clerk  
By INGA JOHNSON

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**PROTECTIVE ORDER**

BASED UPON written stipulation and good cause appearing therefor,

All of defendant's records marked as "PROTECTED MATERIAL" pursuant to the Stipulation for Protective Order are protected, confidential records subject to the terms of the Stipulation between the parties, and the jurisdiction of the Court. Subject to the Stipulation, such information may be produced or disclosed during formal discovery in this litigation.

The Court retains jurisdiction over the parties, their attorneys, and all recipients of such protected records to enforce the provisions of the Stipulation and this Order following termination of the case.

IT IS SO ORDERED.

DATED this 18<sup>th</sup> day of November, 2009.

By

The Honorable Ronald J. Wilper

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of <sup>Nov.</sup>~~September~~, 2009, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Brent S. Bastian  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702  
**Fax No. 342-4455**

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Keely E. Duke  
Kara Heikkila  
Hall, Farley, Oberrecht & Blanton, P.A.  
P.O. Box 1271  
Boise, ID 83701  
**Fax: 208/395-8585**

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

~~Keely E. Duke~~  
~~Kara Heikkila~~

J. DAVID NAVARRO  
INGA JOHNSON

RECEIVED  
MAR 25 2010  
Ada County Clerk

NO. \_\_\_\_\_ FILED 3 30  
A.M. \_\_\_\_\_ P.M.

MAR 26 2010

J. DAVID NAVARRO, Clerk  
By \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**AMENDED PROTECTIVE ORDER**

BASED UPON written stipulation and good cause appearing, and consistent with the previous Protective Order of this Court entered November 18, 2009, this Court orders as follows:

All of the defendant's records marked as "PROTECTED MATERIAL" pursuant to the Amended Stipulation for Protective Order are and remain protected, confidential records subject to the terms of the Stipulation between the parties and the jurisdiction of the Court. All of the parties' records marked as "ATTORNEY EYES ONLY" pursuant to the Amended Stipulation for Protective Order are protected, confidential records subject to the additional terms of the Stipulation between the parties, and the jurisdiction of the Court.

The Court retains jurisdiction over the parties, their attorneys, and all recipients of such protected records to enforce the provisions of the Amended Stipulation and this Amended Protective Order following termination of the case.

ORIGINAL

IT IS SO ORDERED.

DATED this 26<sup>th</sup> day of March, 2010.

By

  
The Honorable Ronald J. Wilper

CLERK'S CERTIFICATE OF SERVICE

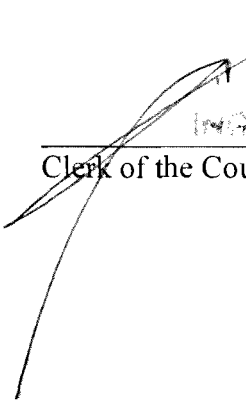
I HEREBY CERTIFY that on the 29 day of March, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Brent S. Bastian  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702  
**Fax No. 342-4455**

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Keely E. Duke  
Kara Heikkila  
Hall, Farley, Oberrecht & Blanton, P.A.  
P.O. Box 1271  
Boise, ID 83701  
**Fax: 208/395-8585**

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
DAVID NAVARRO  
Clerk of the Court

ORIGINAL

RECEIVED  
JUN 22 2010  
Ada County Clerk

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 3:16

JUN 25 2010

J. DAVID NAVARRO, Clerk  
By \_\_\_\_\_ INGA JOHNSON  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**ORDER GRANTING  
STIPULATION TO AMEND  
SCHEDULING ORDER**

The Stipulation to Amend Scheduling Order having been reviewed, and good cause appearing therefore, IT IS HEREBY ORDERED that the deadline to hear motions *in limine* is extended from July 2, 2010, to a deadline to file motions *in limine* by August 19, 2010, with a corresponding deadline to hear all motions *in limine* on September 2, 2010 at 3:00 p.m.

DATED this 24<sup>th</sup> day of June, 2010.

  
\_\_\_\_\_  
The Honorable Ronald J. Wilper

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28 day of June, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Brent S. Bastian  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702

- ☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy 342-4455

Keely E. Duke  
Kara Heikkila  
Hall, Farley, Oberrecht & Blanton, P.A.  
P.O. Box 1271  
Boise, Idaho 83701-1271

- ☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy 395-8585

Clerk

J. DAVID NAVARRO

INGA JOHNSON



NO. \_\_\_\_\_  
FILED  
A.M. \_\_\_\_\_ P.M. 1:00

JUL 22 2010

J. DAVID NAVARRO, Clerk  
By. \_\_\_\_\_  
DEP. INGA JOHNSON

Keely E. Duke  
ISB #6044; [ked@hallfarley.com](mailto:ked@hallfarley.com)  
Kara L. Heikkila  
ISB #8090; [klh@hallfarley.com](mailto:klh@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\44-538\PLEADINGS\Compel Mtn Order.doc

Attorneys for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

*Rel*  
**~~PROPOSED~~ ORDER RE  
DEFENDANT'S MOTION TO  
COMPEL ANSWERS TO  
INTERROGATORIES AND  
RESPONSES TO REQUESTS FOR  
PRODUCTION  
AND FOR FEES AND COSTS**

THIS MATTER having come before the Court upon the Defendant's Motion to Compel Answers to Interrogatories and Responses to Requests for Production and for Fees and Costs, the defendant being represented by its attorney of record, Kara Heikkila, and the plaintiff being represented by his attorney of record, Dara Labrum, the Court hearing oral argument on the matter, and good cause appearing therefore;

IT IS HEREBY ORDERED that the motion is granted in part and denied in part, as follows:

1. Dr. Oakes is to fully respond to Boise Heart Clinic's Second Set of Interrogatory Nos. 13 (a) and (b) as warranted under Rule 37(a)(2) of the Idaho Rules of Civil Procedure. As directed during the hearing on this matter, Dr. Oakes will focus his answers and responses to his side of any conversations with his current employer. Dr. Oakes will correspondingly be required to produce any associated documentation responsive to Request for Production No. 13, other than any contracts in place with respect to his current employer. Dr. Oakes is not required to answer Interrogatory Nos. 13 (c) and (d) as they are not deemed relevant to the matter before this Court, are less likely to lead to the discovery of relevant information, and are too burdensome to produce.

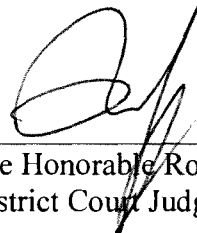
2. Dr. Oakes will answer and respond as directed within seven (7) days of the decision announced during the hearing on July 19, 2010. Dr. Oakes's failure to comply with this order may result in sanctions as provided by the Civil Rules. Additionally, this Court will consider a motion by the defendant to reopen discovery to continue Dr. Oakes's deposition for the limited purpose of inquiring into this issue in the event of any additional dispute regarding the scope of the answers and responses provided.

2. Neither party is awarded its fees and costs associated with this motion.

IT IS SO ORDERED.

DATED this 21<sup>st</sup> day of July, 2010.

By

  
The Honorable Ronald J. Wilper  
District Court Judge

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22 day of July, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Brent S. Bastian  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax No. 342-4455

Keely E. Duke  
Kara Heikkila  
Hall, Farley, Oberrecht & Blanton PA  
PO Box 1271  
Boise, Idaho 83701-1271

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax No. 395-8585

J. DAVID NAVARRO

INGA JOHNSON

Clerk of the Court

RECEIVED  
AUG 16 2010  
Ada County Clerk

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 1:20

AUG 18 2010

J. DAVID NAVARRO, Clerk  
By \_\_\_\_\_ JESSA JOHNSON, Deputy

Thomas A. Banducci (ISB No. 2453)  
tbanducci@bwslawgroup.com  
Dara Labrum (ISB No. 7177)  
dlabrum@bwslawgroup.com  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock, Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant.

Case No. CV OC 0915341

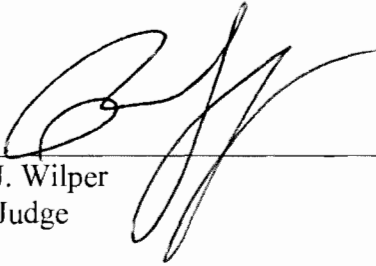
~~REDACTED~~ ORDER ON MOTION TO  
COMPEL

The Plaintiff's Motion to Compel an unredacted version of Exhibit 68 to the Deposition of Dr. James Smith (i.e., the Physician Partnership Meeting Minutes of Boise Heart Clinic dated October 15, 2009), having come before the court, and good cause appearing therefor, the Court shall GRANT the Motion to Compel for the reasons stated on the record of the hearing held on August 16, 2010. Boise Heart Clinic shall produced such document by the close of business on

August 17, 2010. Such minutes will be held by Counsel for Plaintiff as "Attorney Eyes Only" pursuant to the Court's Amended Protective Order and the parties' Amended Stipulation for Protective Order.

IT IS SO ORDERED

DATED this 18 day of August, 2010.

  
\_\_\_\_\_  
Ronald J. Wilper  
District Judge

## CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of August 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☒ U.S. Mail
- ☐ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

Dara Labrum  
802 W. Bannock, Suite 500  
Boise, Idaho 83702

- ☒ U.S. Mail
- ☐ Facsimile (208) 342-4411
- ☐ Hand Delivery
- ☐ Overnight Delivery

Clerk

J DAVID NAVARRO

INGA JOHNSON

NC.

A.M.

FILED

P.M.

2:22

AUG 26 2010

J. DAVID NAVARRO, Clerk  
By CARLY LATIMORE  
DEPUTY

Thomas A. Banducci (ISB No. 2453)  
tbanducci@bwslawgroup.com  
Dara Labrum (ISB No. 7177)  
dlabrum@bwslawgroup.com  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock St., Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455  
*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant.

Case No. CV OC 0915341

**PRE-TRIAL MEMORANDUM**

Pursuant to the Court's Order Setting Proceedings and Trial, Plaintiff/Counterdefendant David F. Oakes, M.D. ("Dr. Oakes") submits this Pre-Trial Memorandum. The Court is already well-versed in the facts, claims, issues, and arguments of the case, having entertained an extensive Motion for Summary Judgment on Dr. Oakes claims in this matter. In addition, the parties' respective Motions in Limine are also pending before the Court, and Jury Instructions will soon be submitted. For this reason, Dr. Oakes refers to these submissions, incorporating the same herein, on the factual, evidentiary, and legal issues presented by the trial of this case.

DATED this 26th day of August, 2010.

BANDUCCI WOODARD SCHWARTZMAN

  
Dara Labrum

*Attorneys for Plaintiff*

00050

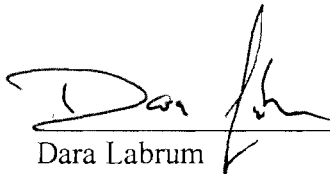
**ORIGINAL**

## CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☐ U.S. Mail
- ☒ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

  
Dara Labrum



RECEIVED

AUG 30 2010

ORIGINAL

Ada County Clerk

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:45

AUG 31 2010

J. DAVID NAVARRO, Clerk

By INCA JONES  
DEPUTY

Thomas A. Banducci (ISB No. 2453)  
*tbanducci@bwslawgroup.com*  
Dara Labrum (ISB No. 7177)  
*dlabrum@bwslawgroup.com*  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock St., Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant.

Case No. CV OC 0915341

**ORDER ALLOWING TELEPHONIC  
APPEARANCE AT PRE-TRIAL  
CONFERENCE**

Plaintiff's Motion for leave for counsel to appear telephonically at the Pretrial Conference set in this matter on September 2, 2010, having come before this Court, and good cause appearing therefor, IT IS HEREBY ORDERED that lead counsel for Plaintiff, Thomas Banducci, may participate telephonically in the pre-trial conference.

DATED this 31<sup>st</sup> day of August 2010.

Ronald J. Wilper  
District Judge

## CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this <sup>21<sup>st</sup></sup>~~30<sup>th</sup>~~ day of August 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☐ U.S. Mail
- ☒ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

Thomas A. Banducci  
Banducci Woodard Schwartzman,  
802 West Bannock, Suite 500  
Boise, ID 83702-5842

- ☐ U.S. Mail
- ☒ Facsimile (208) 342-4455
- ☐ Hand Delivery
- ☐ Overnight Delivery

J. DAVID NAVARRO

INGA JOHNSON

Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. \_\_\_\_\_ FILED 2:25 PM

SEP 21 2010

J. DAVID NAVARRO, Clerk  
BY RICH NELSON  
DEPUTY

DR. DAVID F. OAKES,

Plaintiff,

vs.

BOISE HEART CLINIC PHYSICIANS,  
PLLC

Defendant.

Case No. CV-OC-09-15341

JURY INSTRUCTIONS

HON. Duff McKee

District Judge

Presiding

00054

ORIGINAL

**INSTRUCTION NO. 1**

These instructions explain your duties as jurors and define the law that applies to this case. It is your duty to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. Your decision should be based upon a rational and objective assessment of the evidence. It should not be based on sympathy or prejudice.

It is my duty to instruct you on the points of law necessary to decide the case, and it is your duty to follow the law as I instruct. You must consider these instructions as a whole, not picking out one and disregarding others. The order in which these instructions are given or the manner in which they are numbered has no significance as to the importance of any of them. If you do not understand an instruction, you may send a note to me through the bailiff, and I will try to clarify or explain the point further.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits admitted into evidence, and any stipulated or admitted facts. While the arguments and remarks of the attorneys may help you understand the evidence and apply the instructions, what they say is not evidence. If an attorney's argument or remark has no basis in the evidence, you should disregard it.

The production of evidence in court is governed by rule of law. At times during the trial, I sustained an objection to a question without permitting the witness to answer it, or to an offered exhibit without receiving it into evidence. My rulings are legal matters, and are solely my responsibility. You must not speculate as to the reason for any objection, which was made, or my ruling thereon, and in reaching your decision you may

not consider such a question or exhibit or speculate as to what the answer or exhibit would have shown. Remember, a question is not evidence and should be considered only as it gives meaning to the answer.

[There were occasions where an objection was made after an answer was given or the remark was made, and in my ruling on the objection I instructed that the answer or remark be stricken, or directed that you disregard the answer or remark and dismiss it from your minds. In your deliberations, you must not consider such answer or remark, but must treat it as though you had never heard it.]

The law does not require you to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. There is no magical formula for evaluating testimony. In your everyday affairs, you determine for yourselves whom you believe, what you believe and how much weight you attach to what you are told. The considerations you use in making the more important decisions in your everyday dealings are the same considerations you should apply in your deliberations in this case.

INSTRUCTION NO. 2

When I say that a party has the burden of proof on a proposition, or use the expression "if you find" or "if you decide," I mean you must be persuaded that the proposition is more probably true than not true.

INSTRUCTION NO. 3

When I say a party has the burden of proof on a proposition by clear and convincing evidence, I mean you must be persuaded that it is highly probable that such proposition is true. This is a higher burden than the general burden that the proposition is more probably true than not true.

**INSTRUCTION NO. 4**

Evidence may be either direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. Each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.



INSTRUCTION NO. 5

The corporation involved in this case, Boise Heart Clinic Physicians, PLLC, is entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.

INSTRUCTION NO. 6

In this case, Dr. Oakes claims that he is entitled to additional payment of money from Boise Heart Clinic arising from his employment with the clinic. He contends that he is entitled to certain money received by Boise Heart Clinic from St. Luke's Regional Medical Center after his last day of employment that was attributed to his services for the clinic prior to his last day of employment. Specifically, he contends that he is entitled to payment in two areas:

First, he claims that he is entitled to payment of his share of what has been termed in this case as the "Gainshare Agreement Proceeds," being money paid by St. Luke's RMC to Boise Heart Clinic for cost savings.

Second, he claims he is entitled to payment of what has been termed in this case as "H&V Service" and "Readings" payments, being payments received by Boise Heart Clinic after Dr. Oakes left the employ of the Heart Clinic for services performed at hospitals during his employment.

INSTRUCTION NO. 7

Boise Heart Clinic denies the claims of Dr. Oaks. In addition, Boise Heart Clinic makes its own claim for moneys due. The clinic claims that it overpaid Dr. Oakes in his last salary check, because the amount paid failed to account for or consider adjustments to his pay allowed by the employment agreement. The clinic claims that when these adjustments are taken into account, Dr. Oakes owes the clinic for the overpayment.

With respect to the H&V Service and Readings payments, the clinic contends that it properly accounted for all payments received against the adjustments allowed by the employment contract and that no amount remains due Dr. Oakes.

With respect to the Gainshare Proceeds, the clinic denies that any amounts are due Dr. Oakes under either his employment agreement with the clinic or the Gainshare agreements executed by the clinic and the hospital. Alternatively, the clinic contends that if any amounts are due to Dr. Oakes, the amounts due should first be adjusted according to the employment agreement.

**INSTRUCTION NO. 8-A**

The payments in question must arise as a matter of contract out of Dr. Oakes' employment with Boise Heart Clinic.

There is no dispute that the parties had entered into a written contract of employment in 2008. The parties disagree, and the contract is ambiguous, over the meaning of the phrase "adjusted gross charges," and whether this meant that the clinic could continue to apply adjustments to any amounts becoming due to Dr. Oakes after the last day of his employment.

There is no dispute that there was in existence two contracts covering the Gainshare program. The contracts were signed by the consulting company, by St. Luke's RMC and by the Boise Heart Clinic as an entity. The individual physicians did not sign the agreements, and the agreements are clear that the proceeds are due from the hospital to the clinic. The parties disagree, and the contracts are ambiguous, what the rights of the individual physicians are under the agreements, and whether there is any obligation created within the agreements for the clinic to distribute the proceeds to the individual physicians.

With respect to the written agreements, the unambiguous provisions of the agreements must be accepted as written. You must disregard any testimony or argument that appears to contradict or alter the unambiguous provisions of the written agreements in any respect.

With respect to the ambiguous provisions of the agreements, you must determine what was meant by the ambiguous provisions at the time the contracts were entered into. In so doing, you should first look to the other language of the agreement in question,

construing, if possible, the ambiguous provisions in a manner to give consistent meaning to the whole of the agreement.

Unless you find from the evidence that particular language is to be given special meaning, the general rule is that all language should be given its ordinary meaning, construed both within the clause or sentence where it is found and also within the agreement as a whole, so as to give it consistent meaning, if possible, to the entirety.

If you cannot determine from the wording of the writing what is meant by the ambiguous provisions, you may consider the communications, conduct and dealings between the parties as demonstrated by the evidence in this case and showing what the intended and how they construed the provisions in question.

You should not completely change the agreement or construe one term inconsistently with the remainder of the agreement. The contract should be construed to avoid any contradiction or absurd result.

INSTRUCTION NO. 8-B

Where there is ambiguous language in a contract, and where the true intent of the parties cannot be ascertained by any other evidence, the ambiguity can be resolved by interpreting the contract against the party who drafted the contract or provided the ambiguous language.

**INSTRUCTION NO. 9**

The terms of a written contract may not be changed by oral agreement of the parties expressed prior to the execution of the writing. In this case, all of the written contracts provide that the writing is the complete agreement. You must not consider any explanations offered on a written agreements concerning agreement reached before the written agreement was executed.

The parties may, however, change a written agreement after is execution, and may do so by oral agreement. Any oral agreement must be a complete agreement. That is, the oral communication must demonstrate the mutual acceptance of an agreement or the making of an offer by one side and an acceptance by the other, accomplished by competent parties with authority supported by consideration.

If there is a claim that a written agreement has been modified by oral agreement, and the proof fails of such oral modification, you should then hold the parties to the original agreement as written, without modification.

**INSTRUCTION NO. 10**

A promise is not enforceable as a contract unless something of value was given or agreed to be given in exchange for it. In law, this giving of value or agreement to give value is called "consideration." Consideration is the benefit given or agreed to be given by one party in exchange for the other party's performance or promise to perform.



**INSTRUCTION NO. 11**

An oral modification to compensation terms of a written employment contract must be proved by clear and convincing evidence.

**INSTRUCTION NO. 12**

A party may waive a known right. A waiver is the voluntary relinquishment of a known right, and may be evidenced by conduct, by words or by acquiescence.

**INSTRUCTION NO. 13**

In this case, the plaintiff has the burden of proof

1. That he is entitled to Gainshare proceeds, and/or
2. That he is entitled to money for H&V services and readings; and
3. The amounts thereof.

In this case, the defendant has the burden of proof:

1. That under the employment agreement, the clinic was entitled to make adjustments to the amounts due Dr. Oakes after his employment, and
2. The amounts thereof; and
3. That any amounts becoming due Dr. Oaks after his employment ended are subject to offset by the amount of any adjustments; and
4. That Dr. Oaks is obligated to repay any remaining balance due.

INSTRUCTION NO. 14

In this case, there are three verdicts that are possible.

1. You may find for the plaintiff on his claim of money due from the defendant, and against the defendant on its claims.
2. You may find for the defendant on its claim of money due from the plaintiff, and against the plaintiff on its claims.
3. You may ~~find~~ find against both the plaintiff and defendant, and find that neither are to recover anything from the other.

Appropriate forms of verdict covering all ~~four~~ <sup>three</sup> of these possible verdicts will be provided for your use. Your verdict may be reached by agreement of nine or more of you. As soon as nine of you, or more, have agreed upon a verdict, fill it out and have it signed as instructed.

INSTRUCTION NO. 15

I have given you the rules of law that apply to this case. I have instructed you regarding matters that you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing arguments to you and then you will retire to the jury room for your deliberations.

Each of you has an equally important voice in the jury deliberations. Therefore, the attitude and conduct of jurors at the beginning of the deliberations are important. At the outset of deliberations, it is rarely productive for a juror to make an emphatic expression of opinion on the case or to state how he or she intends to vote. When one does that at the beginning, one's sense of pride may be aroused and there may be reluctance to change that position, even if shown that it is wrong. Remember that you are not partisans or advocates, but you are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views. Deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

INSTRUCTION NO. 16


On retiring to the jury room, select one of your number as a foreman, who will preside over your deliberations.

An appropriate form of verdict will be submitted to you with any instructions. Follow the directions on the verdict form and answer all of the questions required of you by the instructions on the verdict form.

A verdict may be reached by three-fourths of your number, or nine of you. As soon as nine or more of you shall have agreed upon each of the required questions in the verdict, you should fill it out as instructed, and have it signed. ~~It is not necessary that the same nine agree on each question.~~ If your verdict is unanimous, your foreman alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the verdict.

As soon as you have completed and signed the verdict, you will notify the bailiff, who will then return you into open court.

Dated this 21<sup>st</sup> day of September, 2010.



HON. D. DUFF MCKEE  
District Judge

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DR. DAVID F. OAKES,

Plaintiff,

vs.

BOISE HEART CLINIC PHYSICIANS,  
PLLC

Defendant.

Case No. CV-OC-09-15341

**VERDICT**

We, the jury, return our verdict as follows:

We find that neither party is entitled to recover from the other in this case, and we  
award no damages.

DATED this \_\_\_\_\_ day of September, 2010.

Foreperson

00074  
ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DR. DAVID F. OAKES,

Plaintiff,

vs.

BOISE HEART CLINIC PHYSICIANS,  
PLLC

Defendant.

Case No. CV-OC-09-15341

**VERDICT**

We, the jury, return our verdict as follows:

We find in favor of the defendant Boise Heart Clinic Physicians PLLC, and  
against the plaintiff, David F. Oakes, M.D., and award the defendant damages in the  
amount of \$\_\_\_\_\_.

DATED this \_\_\_\_\_ day of September, 2010.

Foreperson

00075  
ORIGINAL



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT SEP 21 2010

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA DAVID NAVARRO, Clerk  
By RIC NELSON, Deputy

DR. DAVID F. OAKES,

Plaintiff,

vs.

BOISE HEART CLINIC PHYSICIANS,  
PLLC

Defendant.

Case No. CV-OC-09-15341

**VERDICT**

We, the jury, return our verdict as follows:

We find in favor of the plaintiff David F. Oakes, M.D., and against the defendant  
Boise Heart Clinic Physicians PLLC, and award the Plaintiff damages in the amount of  
\$ 2043.92.

DATED this 21 day of September, 2010.

Foreperson

DAVID JANSIK

233

171

204

190

177

200

225

ORIGINAL  
00076

SEP 22 2010

J. DAVID NAVARRO, CLERK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**ORDER ON DEFENDANT'S  
MOTIONS IN LIMINE NUMBERS  
1-7 AND PLAINTIFF'S MOTIONS  
IN LIMINE 1-3**

On September 2, 2010, the Court held a Pre-Trial Conference in this matter and heard the parties' arguments on the Motions in Limine filed by Plaintiff and Defendant.

Based upon the pleadings filed, oral argument on each Motion in Limine, and good cause appearing therefore, IT IS HEREBY ORDERED that the Court made the following rulings regarding Defendant's Motion in Limine 1-7:

1. *The Circumstances of Other Employee or Partners' Compensation.* Defendant requested the Court exclude any and all testimony, reference to, or evidence regarding the circumstances of other Defendant's employee or partners' compensation. For the reasons set forth at the hearing, this Motion is GRANTED in its entirety. In addition, the Court GRANTED Defendant's request to exclude Dr. Undesser from testifying at trial.
2. *Character Evidence of Dr. Smith.* Defendant requested the Court exclude any and all testimony, reference to, or evidence regarding the circumstances of character evidence of Dr. Smith. Plaintiff did not oppose this Motion. For the reasons set forth at the hearing, this Motion is GRANTED in its entirety.
3. *Instructing the Jury on Gainshare Consistent with Protective Order.* Defendant requested the Court instruct the jury on Gainshare consistent with the Protective Order entered in this case. Plaintiff did not oppose this request. The Court agreed and will issue an instruction that the parties propose to the Court regarding Gainshare and the Protective Order entered in this case.

4. *Restricting Reference to the Sale of the Boise Heart Clinic.* Defendant requested the Court exclude any and all testimony, reference to, or evidence regarding the circumstances of the sale of the Boise Heart Clinic to St. Luke's Regional Medical Center. Plaintiff did not oppose this request. For the reasons set forth at the hearing, this Motion is GRANTED in its entirety.
5. *Restricting Reference to Alleged Improper or Knowingly Improper Bookkeeping Practices.* Defendant requested the Court exclude any and all testimony, reference to, or evidence regarding alleged improper or knowingly improper bookkeeping practices by Defendant. At the hearing on this Motion, the Court required Plaintiff to provide an offer of proof regarding what Plaintiff's counsel intends to introduce by way of alleged improper or knowingly improper bookkeeping practices by Defendant. Plaintiff's counsel represented to the Court that Plaintiff does not intend to suggest or establish that Defendant engaged in improper or knowingly improper bookkeeping practices according to community standards, but that instead Plaintiff's counsel would focus on how the books are generally kept at BHC, the procedures for collections on patient's accounts, and how BHC kept the records and collected on accounts related to Dr. Oakes's work. Based on this offer of proof and for the reasons set forth at the hearing, this Motion is DENIED.
6. *Damages Outside of the Scope of Contract Damages or to Damages Not Disclosed.* Defendant requested the Court exclude any and all testimony, reference to, or evidence regarding damages outside of the scope of contract damages or damages not disclosed in discovery. For the reasons set forth at the hearing, the Court deferred ruling on this Motion and has requested that the Honorable D. Duff McKee issue a decision with respect to this Motion.
7. *Restricting the Admission of Certain Partner Meeting Minutes as an Exhibit or References to and Testimony on the Same.* Defendant requested that the Court exclude any and all testimony, reference to, or evidence regarding a certain meeting minute. For the reasons set forth at the hearing, this Motion is DENIED and the Court further ordered that this meeting minute may be admitted at trial.

Based upon the pleadings filed, oral argument on each Motion in Limine, and good cause appearing therefore, IT IS FURTHER ORDERED that the Court made the following rulings regarding Plaintiff's Motions in Limine.

1. *Dr. Oakes' Tax Returns.* Plaintiff requested an order excluding Dr. Oakes's tax returns for the years 2007 and 2008. Boise Heart Clinic does not oppose this motion, as long as Dr. Oakes' W-2s with Boise Heart Clinic could be admitted. The motion is therefore GRANTED and the Court further ordered that Dr. Oakes' W-2s with Boise Heart Clinic may be admitted at trial.

2. *Legal Opinion During Deposition Testimony.* Plaintiff has asked for an order excluding certain reference to testimony given by Plaintiff during his deposition. For the reasons stated on the record in the hearing on said motion, the motion is DENIED.
3. *Dr. Oakes's Level of Commitment to the Gainshare Program.* Plaintiff has requested a ruling precluding evidence and testimony that Plaintiff failed to fully participate in the Gainshare Program. For the reasons stated on the record in the hearing on said motion, the motion is DENIED.

IT IS SO ORDERED.



---

The Honorable Ronald Wilper

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22 day of September, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Dara Labrum  
Banducci, Woodard, Schwartzman PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Fax No. **342-4455**

Keely E. Duke  
Hall, Farley, Oberrecht & Blanton, PA  
702 West Idaho Street, Suite 700  
P O Box 1271  
Boise, Idaho 83701

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Fax No. **395-8585**

Clerk

J. DAVID NAVARRO

INGA JOHNSON

NO. \_\_\_\_\_ FILED *4:24*  
A.M. \_\_\_\_\_ P.M.

SEP 27 2010

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

Thomas A. Banducci (ISB No. 2453)  
*tbanducci@bwsllawgroup.com*  
Dara Labrum (ISB No. 7177)  
*dlabrum@bwsllawgroup.com*  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock St., Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

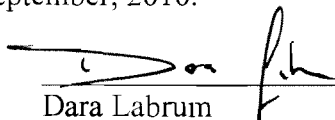
Defendant.

Case No. CV OC 0915341

**SUBMISSION OF [PROPOSED]  
JUDGMENT**

Upon the order of the court, Plaintiff David F. Oakes, M.D., submits this proposed judgment, attached hereto. This proposed judgment is supported by a Memorandum in Support of Treble Damages and Prejudgment Interest, filed contemporaneously herewith.

DATED this 27<sup>th</sup> day of September, 2010.



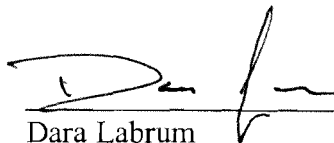
Dara Labrum  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of September 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☐ U.S. Mail
- ☒ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

  
Dara Labrum

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant.

Case No. CV OC 0915341

**JUDGMENT**

This action having come for jury trial before the Hon. D. Duff McKee, Plan B Judge, and the issues having been duly tried and a verdict having been duly rendered by the jury on September 21, 2010,

IT IS SO ORDERED AND ADJUDICATED THAT:

1. With respect to the claim of Plaintiff David F. Oakes, M.D. ("Oakes") against Defendant Boise Heart Clinic, PLLC ("Boise Heart Clinic"):
  - a. that Plaintiff shall recover from Defendant the sum of \$2,043.92;
  - b. this Court having determined that such sum found by the jury is wages, pursuant to the Idaho Wage Claims Act, Idaho Code §45-601(7), this amount shall be trebled to the sum of \$6,131.76, Idaho Code § 45-615; and
  - c. Plaintiff is entitled to prejudgment interest on the un-trebled portion at the statutory rate as provided by law.



2. With respect to the counterclaim of Counter-plaintiff Boise Heart Clinic against Counter-defendant Oakes, Counter-plaintiff is not entitled to judgment in its favor.
3. Plaintiff Oakes is the prevailing party in this action, and shall submit a memorandum of costs and fees as appropriate.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
District Judge

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☐ U.S. Mail
- ☐ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

Dara Labrum  
Banducci Woodard Schwartzman, PLLC  
802 West Bannock St., Suite 500  
Boise, ID 83702

- ☐ U.S. Mail
- ☐ Facsimile (208) 342-4455
- ☐ Hand Delivery
- ☐ Overnight Delivery

---

Clerk of the Court

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED 4:17 P.M.

SEP 27 2010

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

Thomas A. Banducci (ISB No. 2453)  
*thanducci@bwsllawgroup.com*  
Dara Labrum (ISB No. 7177)  
*dlabrum@bwsllawgroup.com*  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock St., Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant.

Case No. CV OC 0915341

**MEMORANDUM IN SUPPORT OF  
TREBLE DAMAGES AND  
PREJUDGMENT INTEREST**

Plaintiff David F. Oakes, M.D. ("Dr. Oakes") submits this memorandum in support of his request for treble damages and prejudgment interest, as reflected in his proposed judgment, submitted contemporaneously herewith. Dr. Oakes is entitled to a trebling of the jury's verdict against Defendant Boise Heart Clinic Physicians, PLLC ("Boise Heart Clinic" or "the Clinic") pursuant to the Idaho Wage Claims Act, Idaho Code § 45-615. Dr. Oakes is also entitled to prejudgment interest on the underlying obligation. He therefore moves the Court for a judgment reflecting both treble damages and prejudgment interest.

## I. ARGUMENT

### A. Treble Damages

Dr. Oakes requests that the Court treble the damages awarded to him in this case by the jury pursuant to the Idaho Wage Claims Act. Under Idaho Code § 45-615, a plaintiff is entitled to recover damages in the amount of three times the unpaid wages found due and owing. Whether a plaintiff is entitled to treble damages is a question for the Court. *See Sage v. Richtron, Inc.*, 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985) (upon jury's finding the amount of wages due and owing, the court properly concluded from the jury's findings that the plaintiffs were entitled to judgment for treble the amount of wages due).

The jury's verdict is for wages due and owing. At trial, it was uncontested that under his employment contract, Dr. Oakes was entitled to one-half of the proceeds from hospital readings and H&V payments received by Boise Heart Clinic for work that Dr. Oakes did prior to the time he left the Clinic. It was uncontested that these monies were wages under the Idaho Wage Claims Act, as they were compensation for labor or services rendered by Dr. Oakes. I.C. § 45-601(7). The only factual questions were the amount to which Dr. Oakes was entitled and whether Boise Heart Clinic could withhold these payments as offsets for the amount in which he had supposedly been overpaid. The jury awarded to Dr. Oakes the amount of \$2,043.92. This is virtually<sup>1</sup> identical to the amounts that Dr. Oakes claimed in this lawsuit for unpaid wages related

---

<sup>1</sup> These damages are demonstrated by two trial exhibits. Trial Exhibit No. 122A is an October 3, 2008, letter sent from Boise Heart Clinic administrator Cindy Loomer to Dr. Oakes, stating that charges and payments had been received by Boise Heart Clinic for hospital readings for July, but that because of adjustments, this amount would be withheld. An attached spreadsheet, and trial testimony, showed this receipt as \$2,264.35 of "Hon. & Prof. Fees." Cindy Loomer testified that this was the July 2008 readings. Exhibit No. 123A is a letter sent to Dr. Oakes from Boise Heart Clinic on November 18, 2008, stating that Boise Heart Clinic had received an H&V payment of \$1,823.41 for the hours Dr. Oakes worked on behalf of the H&V Committee from January through June 2008. Boise Heart Clinic again indicated that this would

to hospital readings and H&V Payments. The jury determined that no portion of these wages could be withheld as offset.

Notwithstanding that Boise Heart Clinic had not yet received the checks for these payments from local hospitals at the time that Dr. Oakes left the Clinic, these amounts were due and owing on that date. This is illustrated by the case *Polk v. Larrabee*, 135 Idaho 303, 17 P.3d 247 (2000). In that case, the plaintiffs asserted a right to commissions from the sale of manufactured homes which they had sold during their employment, although the sales had not yet closed. The defendant argued that these monies were not “due and owing” at the time the plaintiffs resigned because the actual amount of the wages due were not ascertainable until the sale of the homes closed. The Supreme Court found otherwise, noting that these wages were due and owing under the Wage Claims Act at the time the plaintiffs left the defendant’s employ, notwithstanding that there was still a factual question for the jury about the specific amount due and owing. *Id.*, 135 Idaho at 309, 17 P.3d at 253. Such is the case here.

As Boise Heart Clinic failed to pay to Dr. Oakes wages that were due and owing, Dr. Oakes respectfully moves the court for a trebling of the jury’s damages award to the amount of \$6,131.76.

#### **B. Prejudgment Interest**

In addition to the trebling of damages, Dr. Oakes is entitled to prejudgment interest on the untrebled portion. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 635, 759 P.2d 919, 926 (Ct.App.1988) (prejudgment interest due on untrebled wages due). Idaho Code § 28-22-

---

be withheld because of supposed overpayments. When these amounts are totaled and then divided in half, as required by the employment contract, the amount is \$2,043.88. The Jury awarded \$2,043.92. The four-cent discrepancy suggests a minor mathematical error on the part of the jury.

104 allows for prejudgment interest at a rate of twelve percent per year in cases of money due on an express contract. This includes employment contracts. *See Sanchez v. State, Dept. of Correction*, 143 Idaho 239, 248, 141 P.3d 1108, 1117 (2006); *DeWitt v. Medley*, 117 Idaho 744, 748, 791 P.2d 1323, 1327 (Ct. App. 1990); *Whitlock*, 114 Idaho at 635, 759 P.2d at 926.

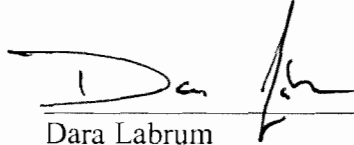
Prejudgment interest may be awarded where the amount of liability is liquidated or capable of ascertainment by a mathematical calculation. *Dillon v. Montgomery*, 138 Idaho 614, 617, 67 P.3d 93, 96 (2003); *Stoor's Inc. v. Dep't of Parks & Recreation*, 119 Idaho 83, 86, 803 P.2d 989, 992 (1990). Prejudgment interest is designed to “fully compensate an injured party for the loss of the use of their money during the pendency of the action.” *Chenery v. Agri-Lines Corp.*, 115 Idaho 281, 289, 766 P.2d 751, 759 (1988). Here, the amount of liability is readily ascertainable and mathematically calculable. The basis for the damages is the amount of money forwarded by the hospitals to Boise Heart Clinic for work that Dr. Oakes did for readings and H&V during his employment with the Clinic. Calculating the damages from those sums is then a simple computation that requires the application of the contractual provision that Dr. Oakes is entitled to one-half of such proceeds. As the amount of liability is liquidated or capable of ascertainment by a mathematical calculation, Dr. Oakes is entitled to prejudgment interest on the untrebled sum of \$2,043.92. For the readings, prejudgment interest runs, at the least, from August 29, 2008, when Boise Heart Clinic posted this payment in its accounting software. (Trial Ex. 122A at OAK000037.) For the H&V payment, prejudgment interest runs, at the least, from October 31, 2008, when Boise Heart Clinic ran a production report which included this sum. (Trial Ex. 123A.)

## II. CONCLUSION

Because the money that Boise Heart Clinic failed to pay to Dr. Oakes was wages, and because that amount is capable of ascertainment by a mathematical calculation, Dr. Oakes is entitled to trebling of damages, and prejudgment interest on the underlying obligation. Dr. Oakes therefore respectfully asks the Court to enter a judgment so holding.

DATED this 27<sup>th</sup> day of September, 2010.

BANDUCCI WOODARD SCHWARTZMAN

A handwritten signature in black ink, appearing to read 'Dara Labrum', is written over a horizontal line.

Dara Labrum

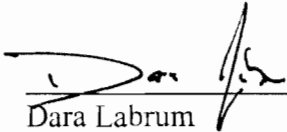
*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of September, 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☐ U.S. Mail
- ☒ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

  
Dara Labrum



# HALL | FARLEY

HALL, FARLEY, OBERRECHT & BLANTON, P.A.

702 WEST IDAHO STREET, SUITE 700  
KEY FINANCIAL CENTER  
BOISE, IDAHO 83702

POST OFFICE BOX 1271  
BOISE, IDAHO 83701

TELEPHONE (208) 395-8500  
FACSIMILE (208) 395-8585  
W:\4-538\CORRESPONDENCE\Wilper-01.doc

E-MAIL: [contact@hallfarley.com](mailto:contact@hallfarley.com)  
WEB PAGE: [www.hallfarley.com](http://www.hallfarley.com)

RICHARD E. HALL  
DONALD J. FARLEY  
PHILLIP S. OBERRECHT  
J. CHARLES BLANTON  
J. KEVIN WEST  
BART W. HARWOOD  
JOHN J. BURKE  
KEVIN J. SCANLAN  
KEELY E. DUKE  
BRYAN A. NICKELS  
CHRIS D. COMSTOCK

JEFFREY R. TOWNSEND  
ROBERT A. BERRY  
SARAH H. ARNETT  
DYLAN A. EATON  
SALLY J. REYNOLDS  
RANDALL L. SCHMITZ  
COLLEEN D. ZAHN  
KARA L. HEIKKILA  
LEWIS N. STODDARD  
LESLIE M. G. HAYES  
MIKELA "MIKE" A. FRENCH

*With Attorneys Admitted to Practice Law in  
Idaho, Alaska, California, Oregon, Utah and Washington*

September 28, 2010

**VIA HAND DELIVERY:**

Honorable Ronald Wilper  
Ada County Courthouse  
200 W. Front Street  
Boise, ID 83702

Re: *Oakes v. Boise Heart Clinic*  
Ada County Case No.: CV OC 0915341  
HFOB No.: 4-538

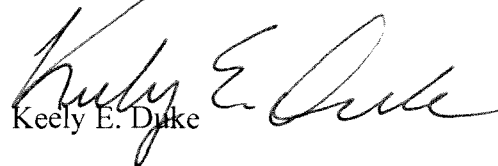
Dear Judge Wilper:

We are not certain whether you will be handling the post-trial motions with respect to this case or whether Judge McKee will be. Judge McKee had indicated in chambers during some of our meetings with him during trial how he would handle some of the post trial matters if he is the Judge making decisions with respect to those matters. Having said that, we understand plaintiff's counsel submitted a proposed Judgment for your consideration that we believe inappropriate for many reasons. Accordingly, we respectfully request you do not execute plaintiff's proposed Judgment and instead execute the enclosed proposed Judgment by Boise Heart Clinic. To that end, we will be filing a Memorandum in Opposition to Plaintiff's Proposed Judgment and in support of Boise Heart Clinic's proposed Judgment by the end of this week.

We appreciate your consideration in this matter.

Best regards.

Very truly yours,

  
Keely E. Duke

KED/MAF/sls

Encl.

cc w/encl.: Tom Banducci

00092

ORIGINAL

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
AM. \_\_\_\_\_ PM. 5:00

OCT 01 2010

J. DAVID NAVARRO, Clerk  
By \_\_\_\_\_ DEPUTY

Keely E. Duke  
ISB #6044; ked@hallfarley.com  
Kara L. Heikkila  
ISB #8090; klh@hallfarley.com  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\44-538\TRIAL\Treble Damages-Oakes-Memo- BHC Opp.doc

Attorneys for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MEMORANDUM  
IN SUPPORT OF TREBLE  
DAMAGES AND PREJUDGMENT  
INTEREST**

**COMES NOW** Defendant/Counterclaimant, Boise Heart Clinic Physicians, PLLC (Boise Heart Clinic) by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and hereby submits this memorandum in opposition to Plaintiff's Memorandum in Support of Treble Damages and Prejudgment Interest.

**I. INTRODUCTION**

The Honorable D. Duff McKee presided over the trial of this matter from September 15, 2010 to September 21, 2010. Despite Dr. Oakes asking for over \$25,000 from the jury, the jury returned a nominal verdict of \$2,043.92 in Dr. David Oakes' favor. On September 27, 2010,

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF TREBLE DAMAGES  
AND PREJUDGMENT INTEREST- 1

00093

without allowing Boise Heart Clinic's counsel an opportunity to comment on the proposed Judgment before it was submitted to the Court, Dr. Oakes submitted to the non-trial Judge a proposed judgment as well as a memorandum in support of that judgment, which would treble the jury's award of damages to him, award him prejudgment interest, and declare him to be the prevailing party in this lawsuit. Dr. Oakes' proposed judgment is inappropriate for a number of reasons.

First, in his memorandum in support of treble damages and prejudgment interest, Dr. Oakes states that the award the jury made to him represents 50% of the total of Dr. Oakes' last Heart & Vascular ("H & V") payment, last Saint Alphonsus reading, and last St. Luke's reading. *See* Pl.'s Mem. in Supp. of Treble Damages at 2 n.1. First, there is no way of knowing from the verdict form if that is what the jury's award represents. Second, even if that is what the award represents, Dr. Oakes never identified these monies as damages in his complaint, nor did he amend his complaint to include a claim for them; rather, Dr. Oakes sprang these damages on Boise Heart Clinic in August 2010 right before the trial. As such, the Idaho Wage Claim Act does not apply to the \$2,043.92 the jury awarded because Dr. Oakes failed to timely file suit (and in fact never filed suit) with respect to these monies; rather, the only claim for wages and monetary damages in Dr. Oakes' complaint in this action were for Gainshare monies, which the jury rejected.

As is evidenced by a reading of the Complaint, Dr. Oakes and his counsel never once mentioned a claim for H & V payments or payments for hospital readings. Had Dr. Oakes intended to seek these monies, he should have referenced Boise Heart Clinic's withholding of these funds in his Complaint. Pl.'s Compl. at 3-4. Their mention is conspicuously absent. Similarly, none of the counts pleaded in Dr. Oakes' complaint have anything to do with these

monies but instead all related to Gainshare: Count I (breach of contract) is addressed to Gainshare; Count II (breach of covenant of good faith) is addressed to Gainshare; Count III (violation of wage law) is addressed to Gainshare; Count IV (quantum meruit/unjust enrichment) mentions only Gainshare; and Count V (conversion) mentions only Gainshare. *Id.* at 4-7. Count VI seeks declaratory relief, in anticipation of Defendant's counterclaim, and again fails to mention, let alone request as damages, the H & V and hospital readings monies. *Id.* at 7-8. Any mention of the amount of money awarded by the jury, or how such might have been calculated, is also missing.

More importantly, Dr. Oakes failed to raise any issue as to whether the H & V and readings monies constitute wages under the Idaho Wage Claim Act. Dr. Oakes did not argue this matter of law when he answered Boise Heart Clinic's motion for summary judgment on Dr. Oakes' claim. *See* Opp. to Def.'s Mot. for Summ. J. Nor did he address this issue in his motion for a directed verdict on Boise Heart Clinic's counterclaim. *See* Mot. for Directed Verdict on Def.'s Countercl. Finally, Dr. Oakes failed to make this argument when he argued orally against Boise Heart Clinic's motion for a directed verdict on Dr. Oakes' claim.<sup>1</sup>

Because he failed to assert and litigate his right to the monies awarded him by the jury, and because he further failed to identify them as wages until now, Dr. Oakes request to have the jury's award trebled is time barred. Further, to treble the jury's award would contravene Idaho wage law and the intent behind it. For similar reasons, it would be error for the Court to award Dr. Oakes prejudgment interest. Finally, Dr. Oakes cannot be said to be the "prevailing party" in

---

<sup>1</sup> It is true that the parties discussed the H & V and readings monies during a settlement discussion on the eve of trial in August of 2010. In response, Boise Heart Clinic brought a motion *in limine* to exclude reference to these damages on the basis that they were not disclosed during discovery. *See* Def.'s Mem. in Supp. of Def.'s Mot. *In Limine* 6. In response, Dr. Oakes did argue that the motion should be denied. *See* Resp. to Def.'s Mot. *In Limine*. However, even at this time, Dr. Oakes failed to amend his pleadings to bring a claim for these monies and similarly failed to argue that these monies constitute wages for purposes of the Idaho Wage Claim Act.

this action, a declaration that Dr. Oakes seeks to have the Court make in his proposed judgment, but which he tellingly does not address in his accompanying memorandum.

At every turn, the gravamen of Dr. Oakes' lawsuit has been the question of whether Dr. Oakes is entitled to Gainshare monies. The jury found that he is not. The Court should not now, against law and reason, inflate an award that Dr. Oakes never properly and timely sought. The Court should instead enter Boise Heart Clinic's proposed judgment.

## **II. DISCUSSION**<sup>2</sup>

### **A. Dr. Oakes' request to have this Court treble the jury's award is time barred.**

The jury awarded Dr. Oakes \$2,043.92. Dr. Oakes is now seeking to have this award trebled pursuant to Idaho wage law. Dr. Oakes request should be denied.

Idaho Code § 45-614 governs the time for pursuing a claim to wages and provides in relevant part that:

Any person shall have the right to collect wages . . . pursuant to a contract of employment . . . provided . . . that in the event salary or wages have been paid to any employee and such employee claims additional . . . wages . . . because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within six (6) months from the accrual of the cause of action. . . . . In the event an action is not commenced as herein provided, any remedy on the cause of action shall be forever barred.

(emphasis added). In this case, the H & V and readings monies were for services rendered by Dr. Oakes prior to July 31, 2008. Trial Exhibit Nos. 122A and 123A (which are attached for reference). In August 2008, Boise Heart Clinic made a final payment to Dr. Oakes for all of his other services rendered prior to July 31, 2008. Trial Exhibit 123A. The H & V and readings

---

<sup>2</sup> For purposes of this memorandum, it will be assumed, as Dr. Oakes suggests, that the nominal amount of money the jury awarded Dr. Oakes does indeed represent a portion of H & V and hospital readings payments and has nothing to do with Gainshare monies Dr. Oakes felt he was owed.

monies were ultimately withheld as part of Boise Heart Clinic's counterclaim. However, to the extent they can be considered "wages" under Idaho wage law, they constitute "additional . . . wages . . . [for] work done or services performed during [Dr. Oakes'] employment for the pay period covered" by Boise Heart Clinic's final payment. In other words, Dr. Oakes needed to commence an action for the monies the jury awarded him, and which Boise Heart Clinic withheld to offset its counterclaim, within six months from the time they became due. I.C. § 45-614. For purposes of wage law, the payments would have become due in Fall of 2008. Trial Exhibits 122A and 123A. Dr. Oakes did not file suit until August 11, 2009, almost a year later. *See* Pl.'s Compl. Even then, Dr. Oakes did not make a claim for these specific monies, let alone ask for them to be trebled. *See id.* Because he failed to file suit within six months of the monies becoming due, the Idaho Wage Claim Act is inapplicable and his "remedy on the cause of action shall be forever barred."

There can be no dispute Dr. Oakes failed to make a claim for the monies the jury ultimately awarded him within the required six-months of their becoming due, as defined by wage law, in order to have the award trebled. Therefore, Dr. Oakes' proposed judgment, which trebles the jury's award pursuant to I.C. § 45-615, should not be entered, and Boise Heart Clinic's proposed judgment, setting the amount owed to Dr. Oakes at the amount awarded by the jury, should be entered instead.

**B. Trebling Dr. Oakes' damages would not comport with Idaho wage law or the intent behind it.**

Should the Court find Dr. Oakes' request for treble damages is not time barred, it should consider that trebling the jury's award would contravene Idaho wage law. Idaho Code § 45-611(1) provides for the trebling of damages for a wage claim as follows:

In case of a dispute as to the amount of wages due an employee,

the employer shall pay, without condition and within the time set by this chapter, all wages, or parts thereof, conceded by the employer to be due, leaving to the employee all remedies the employee might otherwise be entitled to, including those provided under this chapter, as to any balance claimed. Whenever an employer pays all wages not in dispute within the time limits set forth in section 45-606, Idaho Code, no penalties may be assessed under this chapter, unless it can be shown that the remaining balance of wages due were withheld willfully, arbitrarily and without just cause.

(emphasis added). The plain language of this provision is clear: damages are to be trebled as a penalty and should only be trebled if Dr. Oakes can show that Boise Heart Clinic acted willfully, arbitrarily and without just cause in withholding the wages the jury ultimately awarded to Dr. Oakes. *Barth v. Canyon County*, 128 Idaho 707, 712, 918 P.2d 576, 581 (1996) (holding that I.C. § 45-611(1) is a penalty, rather than compensatory, and is thus not strictly construed); *but see also Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 114 P.3d 974 (2005) (awarding treble damages under I.C. § 45-615(2) in order to fully compensate the employee).

Boise Heart Clinic, in withholding the disputed H & V payment and payments for hospital readings, was not willful, arbitrary, or unjust. As was testified to at trial, Boise Heart Clinic's final payment to Dr. Oakes was grossly inflated, as it did not account for subsequent adjustments to Dr. Oakes' charges/billings, which is why Boise Heart Clinic was justified in retaining the money. *See* Trial Exhibit 123A. The jury ultimately disagreed with Boise Heart Clinic; but this fact does not necessarily give rise to a situation in which the Legislature intended the Court to treble damages.

The average wage earner depends greatly on the regular receipt of earned wages. If unpaid, serious economic injury may result to the wage earner. The legislature also has recognized that the wage earner would not [be] fully compensated if he were allowed merely to recover his withheld wages because of the costs of attorney's fees and suit. Although attorney's fees are authorized by statute, they can not be awarded unless the wage earner

recovers all that he claims. Therefore, in many cases there is a need for additional compensation. Thus, although the award of treble damages does tend to penalize the employer, it also serves to fully compensate the wage earning employee for the injury caused him by the delay he experiences in recovering his withheld wages in a court of law and the expenses connected with the recovery.

*Goff v. H.J.H. Co.*, 95 Idaho 837, 839-40, 521 P.2d 661, 663-64 (1974). In this case, Dr. Oakes never pleaded entitlement to the monies the jury awarded him. If he did suffer economic injury as a result of their being withheld, it was not enough to motivate him to file suit or to amend his suit to include them; rather, this unpled claim for damages that Dr. Oakes wants trebled was added on the eve of trial. Similarly, because Dr. Oakes never included a claim for these monies in his pleadings, let alone an argument that the Court should treble his damages, he cannot say that he needs to be compensated for any attorney fees. Dr. Oakes' claim in this case was regarding Gainshare and not the H & V and readings payments.

In short, Dr. Oakes did not find Boise Heart Clinic's withholding of his H & V and readings payments egregious enough or economically injurious enough to file suit. To now treble the jury's award of monies that Dr. Oakes never sought in the first place, would unfairly punish Boise Heart Clinic rather than fairly compensate Dr. Oakes for attorney fees, in violation of both the letter and the spirit of Idaho wage law, and would result in an unexpected and unfair windfall to Dr. Oakes.

**C. Dr. Oakes is not entitled to prejudgment interest.**

In his proposed judgment, Dr. Oakes seeks to have the Court award him prejudgment interest on his jury award, even though Dr. Oakes never brought suit for the monies awarded to him. In *Kidd Island Bay Water Users Co-op. Ass'n, Inc. v. Miller*, 136 Idaho 571, 575, 38 P.3d 609, 613 (2001), the lower court awarded a water co-op prejudgment interest on levies made



against its members for improvements to the water system. The Supreme Court of Idaho reversed, noting that:

While there is no question that Defendants were able to calculate the amount of the actual assessments, and could have tendered the money, they were not required to. No levy was actually made on the members until the time of trial, and until such levy was made, the money had not “become[ ] due.” Therefore, the award of prejudgment interest to Kidd Island is reversed.

*Id.* (quoting I.C. § 28-22-104)(emphasis added); *accord U.S., for Use and Benefit of Belmont v. Mittry Bros. Const. Co.*, 4 F.Supp. 216, 219 (D.C. IDAHO 1933) (holding that since no demand was made upon surety company for payment until suit was commenced, interest should not begin to accrue until commencement of the suit for payment). An award of prejudgment interest would represent another unjust inflation of the award of monies that Dr. Oakes never sought in this lawsuit until just before trial. Generally, an employee is required to mitigate his damages under an employment contract. *Anderson v. Gailey*, 100 Idaho 796, 801, 606 P.2d 90, 95 (1980). Sitting by silently and never making a claim to monies eventually awarded by a jury and then asking for an award of prejudgment interest on those monies is the exacerbation rather than mitigation of damages.

Because Dr. Oakes never sued for the monies ultimately awarded to him, those moneys did not “become due” for purposes of the statute governing prejudgment interest until the jury made its award. Once again, to enter Dr. Oakes’ proposed judgment would contravene both reason and the law.

**D. Dr. Oakes is not the prevailing party; in fact, if there is a prevailing party in this case, it is the Boise Heart Clinic.**

Tellingly, Dr. Oakes does not include a section addressing the issue of who is the prevailing party in this action in the memorandum he filed contemporaneously with his proposed

judgment. Dr. Oakes clearly seeks a prevailing party determination as a prelude to requesting attorney fees. However, a review of Dr. Oakes' claim in this case and the nominal amount of money awarded to him by the jury illustrates Dr. Oakes was not the prevailing party in this action.

Idaho Rule of Civil Procedure 54(d)(1) guides the Court's inquiry on the prevailing party question as follows:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

(emphasis added). The Supreme Court of the Idaho has made it clear that with respect to an analysis of whether there is a prevailing party, the Court must look at the case from an overall view and not on a "claim-by-claim" basis:

"In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed 'in the action.' That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." This Court has held that when both parties are partially successful, it is within the district court's discretion to decline an award of attorney fees to either side. *Israel v. Leachman*, 139 Idaho 24, 27, 72 P.3d 864, 867 (2003).

*Jorgensen v. Coppedge*, 148 Idaho 536, 539, 224 P.3d 1125, 1128 (2010) (quotations and some citations omitted). The *Jorgensen* court went on to explain situations where the district court appropriately exercised its discretion in performing the prevailing party analysis and determining there was not a prevailing party:

In Israel, the plaintiffs prevailed on their Idaho Consumer Protection Act claims but did not prevail on their breach of contract, statutory violations, and fraud claims. This Court affirmed the district court's decision not to award attorney fees because it determined that both parties prevailed in part. Similarly, in Trilogy Network Systems, Inc. v. Johnson, this Court affirmed the district court's determination that each party had prevailed in part and was unsuccessful in part because the plaintiff was successful in proving a breach of contract but failed to prove damages. In both Israel and Trilogy Network Systems, we deferred to the discretion of the district court because each time it utilized, either explicitly or implicitly, the prevailing party analysis in Idaho Rule of Civil Procedure 54(d)(1)(B) and looked at the multiple claims of each party in determining that neither party prevailed in the action.

*Id.*

In this case, Dr. Oakes sought to recover approximately \$23,000.00 of Gainshare monies, an amount he sought to have trebled to approximately \$69,000.00 pursuant to wage law. By contrast, Boise Heart Clinic sought approximately \$25,000 in its counterclaim. The jury denied both claims. The result of the action is that Dr. Oakes fell much further short of his sought after relief than did Boise Heart Clinic. The only monies Dr. Oakes ever sought prior to August 2010 were Gainshare proceeds, and Boise Heart Clinic defeated his claim to those proceeds. In other words, if any party prevailed it is Boise Heart Clinic, and to enter Dr. Oakes' proposed judgment to the contrary would be error.<sup>3</sup>

### **III. CONCLUSION**

Dr. Oakes seeks, by his proposed judgment, to have this Court unduly inflate an award of damages for which he never brought a claim. Dr. Oakes did not prevail in this matter as it was pleaded to the Court; rather, Boise Heart prevailed in defeating Dr. Oakes' only pled claim. Dr. Oakes failed to receive the monies he sued for, and he did not sue for the monies he received.

---

<sup>3</sup> Boise Heart reserves the right to timely file a request that it is in fact the prevailing party in this lawsuit and that it is entitled to a reasonable amount of attorneys' fees.

Instead, he sat on his rights, allowing the statute of limitations on a wage claim to run and expending no time and effort before this Court to obtain the nominal amount the jury awarded him. All Dr. Oakes' efforts were directed at obtaining Gainshare monies, and the jury denied those to him. It would be unreasonable and contrary to law to allow Dr. Oakes to come forward at this late date to opportunistically capitalize upon his unlooked for award.

DATED this 15<sup>th</sup> day of October, 2010.

HALL, FARLEY, OBERRECHT &  
BLANTON, P.A.

By: Keely E. Duke  
Keely E. Duke - Of the Firm  
Attorneys for Defendant/Counterclaimant

**CERTIFICATE OF SERVICE**

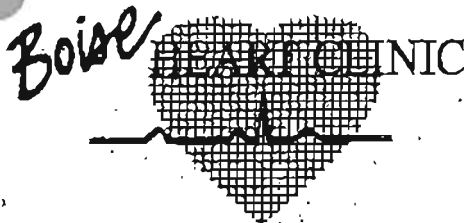
I HEREBY CERTIFY that on the 15<sup>th</sup> day of September, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702  
Fax No. 342-4455

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Keely E. Duke  
Keely E. Duke

JAMES W. SMITH, M.D., FACC  
ROBERT S. LEE, M.D., FACC



287 WEST JEFFERSON STREET  
BOISE, IDAHO 83702-6094  
(208) 343-7940 • FAX (208) 385-7708

BOARD CERTIFIED CARDIOLOGISTS  
Interventional Cardiology & Electrophysiology

October 3, 2008

David Oakes, MD  
2271 N Cliffview Way  
Boise, ID 83702

Dear Dr. Oakes,

Enclosed please find the information you requested. These are the reports for August, showing the charges & payments received for your hospital readings for July. As you can see, additional adjustments for prior charges were posted in August. These included contractual adjustments from insurances, as well as some write offs for bad debt.

The salary calculation spreadsheet shows there is a negative net salary, thus no payment was made to you in August. As we believe we have posted all of your charges, we do not expect to see any additional amounts due to you. Should Gainshare results from the hospital become available, we will revisit this.

Also, I wanted to let you know that both St. Luke's and St. Al's tried to pay us for your August readings. We returned their checks and informed them of where your payments should be sent. I trust that you did receive them.

I sincerely hope all is going well for you.

Cindy Loomer  
Practice Administrator

Enclosures

DEFENDANT'S  
EXHIBIT  
**122A**  
CV DC 0915341

OAK 000012

00104

BOISE HEART CLINIC PLLC  
DFO SALARY CALCULATION  
2008

00105

Month	Adjusted Gross Charges	Salary for Month .5 X Col. B	Net Salary	Amount Paid	Date Paid	Balance Due	% Paid on Adj. Chgs		Receipts	% Paid on Receipts	
							Per Month	Year End		Per Month	Year End
2007 Balance						\$ (396.24)					
Jan. 2008	\$ 37,876.84	\$ 18,938.42	\$ 18,938.42	\$ 18,550.00	2/5/2008	\$ (7.82)	48.97%		\$ 78,111.78	23.75%	
Feb. 2008	\$ 64,715.64	\$ 32,357.82	\$ 32,357.82	\$ 29,115.00	3/5/2008	\$ 3,235.00	44.99%		\$ 47,685.84	61.06%	
March 2008	\$ 83,887.40	\$ 41,943.70	\$ 41,943.70	\$ 45,180.00	4/3/2008	\$ (1.30)	53.86%		\$ 57,552.80	78.50%	
April 2008	\$ 48,390.01	\$ 24,195.01	\$ 24,195.01	\$ 24,200.00	5/5/2008	\$ (6.30)	50.01%		\$ 66,655.59	36.31%	
May 2008	\$ 60,492.27	\$ 30,246.14	\$ 30,246.14	\$ 30,240.00	6/4/2008	\$ (0.16)	49.99%		\$ 52,377.25	57.73%	
June 2008	\$ 51,366.68	\$ 25,683.34	\$ 25,683.34	\$ 25,685.00	7/3/2008	\$ (1.82)	50.00%		\$ 51,838.29	49.55%	
July 2008	\$ 48,182.09	\$ 24,091.05	\$ 24,091.05	\$ 24,089.22	8/5/2008	\$ 0.00	50.00%		\$ 59,537.36	40.46%	
Aug. 2008	\$ (11,778.22)	\$ (5,889.11)	\$ (5,889.11)			\$ (5,889.11)	0.00%		\$ -	#DIV/0!	
Sept. 2008		\$ -	\$ -			\$ (5,889.11)	#DIV/0!		\$ -	#DIV/0!	
Oct. 2008		\$ -	\$ -			\$ (5,889.11)	#DIV/0!		\$ -	#DIV/0!	
Nov. 2008		\$ -	\$ -			\$ (5,889.11)	#DIV/0!		\$ -	#DIV/0!	
Dec. 2008		\$ -	\$ -			\$ (5,889.11)	#DIV/0!		\$ -	#DIV/0!	
TOTAL	\$ 383,132.71	\$ 191,566.36		\$ 197,059.22				51.43%	\$ 413,758.91	47.63%	

From  
Aug 410

OAK 000036

Part 1 099890-PRODSTD  
 in: Johns  
 re: Fee for Service

BOISE HEART CLINIC PLLC  
 Doctors Production

Page: 46  
 Run Date: 08/29/08  
 Period Ending: 08/29/08

4-DAVID F. DAKES, MD

In-Description	Month to Date					Year to Date				
	Count	Charges	Payments	Adjustment	Net Amount	Count	Charges	Payments	Adjustment	Net Amount
view Recap 1										
	418		33.71	1040.36	1006.65	4696	40.00	468.22	20893.44	20901.66
I.V'S						1	4.00			4.00
ANGIOPLASTIES			1991.13	1426.68	3417.81	21	43943.53	23052.67	26353.01	5462.15
HIGH-1 PROF FEES	3	2244.35	2244.35	250.00	250.00	17	44735.15	44735.15	250.00	250.00
MISC	3	310.00	223.20	86.80		33	3475.19	2502.14	973.05	
EKGs	2	53.70	5219.21	1085.72	6231.00	583	53449.37	46835.12	12724.40	7910.15
HOSPITAL		25.52	5455.67	1617.89	6949.04	267	57569.81	42968.50	16810.77	2609.46
INJECTIONS						11	171.59	404.95	111.93	345.29
ECHOS			561.27	103.47	694.74	165	44263.97	30159.05	23463.54	9358.60
LABORATORY	1	8.49	412.76	362.41	799.68	639	14190.76	7136.16	8249.42	1124.82
HOLDERS	1	615.00	450.88	339.40	175.28	20	5925.29	5493.81	2540.58	2108.61
NUCLEAR STUDIES				22.59	22.59				1065.11	1065.11
OFFICE			8791.97	1756.70	10530.67	1103	103549.44	96516.74	23277.64	16244.54
PACEMAKERS			5507.04	3599.71	9107.75	95	79292.70	53646.34	44724.97	19168.61
REPORTS	1	15.00	15.00			18	555.00	520.00	50.60	15.00
STUDIES			4695.23	5464.28	10159.46	284	158757.05	80399.88	93861.00	15532.83
TRENCH			834.24	530.53	1364.77	73	16652.78	13330.10	10108.89	6586.21
X-RAY			121.26	59.54	180.80	27	1659.57	1343.24	934.13	617.60
***Totals***	429	3289.29	36608.72	15067.51	48386.94	8059	628345.72	450367.63	245213.01	67234.92

clar Recap

24-DAVID F. DAKES, MD	429	3289.29	36608.72	15067.51	48386.94	8059	628345.72	450367.63	245213.01	67234.92
***Totals***	429	3289.29	36608.72	15067.51	48386.94	8059	628345.72	450367.63	245213.01	67234.92

Overall Production

	M T D		Y T D	
	Count	Amount	Count	Amount
Charges	427	3289.29	8010	628345.72
Payments		36608.72	39	450367.63
Adjustments	2	15067.51	10	245213.01
Net Amt	429	48386.94	8059	67234.92
Assisted Total	78	86.00	1360	22066.69
Unassisted Total	351	11664.22	6660	361126.02
Doctor Production		11778.22		389132.71

OAK 000037

JAMES W. SMITH, M.D.  
ROBERT S. LEE, M.D.  
RENEE L. MANRING, A.C.N.P.



287 WEST JEFFERSON STREET  
BOISE, IDAHO 83702-6094  
(208) 343-7940 • FAX (208) 365-7708  
[www.boiseheartclinic.com](http://www.boiseheartclinic.com)

BOARD CERTIFIED CARDIOLOGISTS  
Interventional Cardiology & Electrophysiology

November 18, 2008

David F. Oakes, MD  
1070 N. Curtis Rd., Suite 125  
Boise, ID 83706

Dear Dr. Oakes :

I am writing in response to your telephone call last week about the H & V income for January through June. We did receive payment of \$1,823.41 for hours you worked during that time. This is reflected on the enclosed production report for October. I have also included production reports for August and September.

When you left Boise Heart Clinic, we paid you for hours worked and adjustments taken through July 31, 2008. That payment should have included estimated adjustments that we would make as insurance payments were made on outstanding claims. We did not do that, and thus are taking those adjustments as the payments are made. As you can see from the enclosed salary calculation spreadsheet, the overall overpayment to you stands at \$8,201.47. This includes the H & V payment that was made in October.

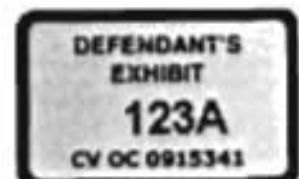
At this time, no further payments from Boise Heart Clinic are due to you. We are expecting payment from Goodroe Gainshare program shortly, and after that is received we will give you a final accounting. Please feel free to contact me if you have further questions.

I received the Arkansas Health & Welfare paperwork—thank you for completing that and returning it to me.

Thank you,

Cindy Loomer  
Practice Administrator

Enclosures





BOISE HEART CLINIC PLLC  
PHYSICIANS PRODUCTION REPORT  
YTD ENDING 12-31-08 & THE MONTH OF AUGUST 2008

DAVID F. OAKES, M.D.

	YTD 2008			YTD 2007			PROCEDURE INCREASE (DECREASE)	AMOUNT INCREASE (DECREASE)
	PROC	CHARGES	AVERAGE	PROC	CHARGES	AVERAGE		
OFFICE:								
L-Lab	1,449	14,191	\$9.79	1,004	19,616	\$19.54	445	(\$5,425)
X-X-ray	27	1,660	\$61.47	33	2,069	\$62.71	(6)	(\$410)
O-Office	1,103	103,549	\$93.88	1,118	113,553	\$101.57	(15)	(\$10,004)
I-Injections	11	172	\$15.60	6	319	\$53.20	5	(\$148)
I-I.V.s	1	4	\$4.00	7	21	\$3.00	(6)	(\$17)
E-EKGs	583	53,449	\$91.68	585	52,645	\$89.99	(2)	\$804
T-Treadmills	73	16,853	\$230.86	137	31,563	\$230.38	(64)	(\$14,710)
M-Holters	20	5,926	\$296.29	24	9,821	\$409.21	(4)	(\$3,895)
N-Nuclear Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
D-Drug Studies	0	0	\$0.00	90	7,759	\$86.21	(90)	(\$7,759)
K - ECPs	0	0	\$0.00	0	0	\$0.00	0	\$0
J-Echos	165	44,264	\$268.27	312	86,962	\$278.72	(147)	(\$42,698)
R-Reports	18	555	\$30.83	19	697	\$36.67	(1)	(\$142)
B-Hon.&Prof.Fees	19	44,735	\$2,354.48	29	47,333	\$1,632.18	(10)	(\$2,598)
C-Misc.&N-H.Health	29	3,475	\$119.83	31	3,703	\$119.45	(2)	(\$228)
TOTAL OFFICE	3,498	\$288,833	\$82.57	3,395	\$376,061	\$110.77	103	(\$87,228)
% of Total	83.95%	45.97%		80.74%	49.42%		3.21%	-3.45%
HOSPITAL:								
P-Pacemakers	95	79,203	\$833.71	95	94,792	\$997.81	0	(\$15,589)
H-Hospital	269	57,570	\$214.01	303	60,952	\$201.16	(34)	(\$3,382)
S-Studies	286	158,757	\$555.09	386	179,211	\$464.28	(100)	(\$20,453)
A-Angioplasties	19	43,944	\$2,312.82	26	49,897	\$1,919.12	(7)	(\$5,954)
TOTAL HOSPITAL	669	\$339,473	\$507.43	810	\$384,851	\$475.13	(141)	(\$45,378)
% of Total	16.05%	54.03%		19.26%	50.58%		-3.21%	3.45%
TOTAL YTD	4,167	\$628,306	\$150.78	4,205	\$760,912	\$180.95	(38)	(\$132,606)
LESS ADJUSTMENTS		-245,213			-262,022			\$16,809
TOTAL ADJ. CHARGES		\$383,093			\$498,891			(\$115,798)

	Aug-08			Aug-07			PROCEDURE INCREASE (DECREASE)	AMOUNT INCREASE (DECREASE)
	PROC	CHARGES	AVERAGE	PROC	CHARGES	AVERAGE		
OFFICE:								
L-Lab	1	5	\$5.49	125	2,396	\$19.17	(124)	(\$2,390)
X-X+BQ	0	0	\$0.00	8	490	\$61.23	(8)	(\$490)
O-Office	0	0	\$0.00	133	13,313	\$100.10	(133)	(\$13,313)
I-Injections	0	0	\$0.00	0	0	\$0.00	0	\$0
I-I.V.s	0	0	\$0.00	0	0	\$0.00	0	\$0
E-EKGs	2	54	\$26.97	84	8,082	\$96.21	(82)	(\$8,028)
T-Treadmills	0	0	\$0.00	13	3,448	\$265.23	(13)	(\$3,448)
M-Holters	1	615	\$615.00	7	3,371	\$481.59	(6)	(\$2,756)
N-Nuclear Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
D-Drug Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
K - ECPs	0	0	\$0.00	0	0	\$0.00	0	\$0
J-Echos	0	0	\$0.00	23	8,700	\$378.25	(23)	(\$8,700)
R-Reports	1	15	\$15.00	1	15	\$15.00	0	\$0
B-Hon.&Prof.Fees	3	2,264	\$754.78	3	5,347	\$1,782.45	0	(\$3,083)
C-Misc.&N-H.Health	3	310	\$103.33	3	275	\$91.67	0	\$35
TOTAL OFFICE	11	\$3,264	\$296.71	400	\$45,437	\$113.59	(389)	(\$42,173)
% of Total	100.00%	99.22%		88.11%	100.00%		87.81%	51.87%
HOSPITAL:								
P-Pacemakers	0	0	\$0.00	0	12,906	\$0.00	0	(\$12,906)
H-Hospital	0	26	\$0.00	29	5,714	\$197.02	(29)	(\$5,688)
S-Studies	0	0	\$0.00	25	20,534	\$821.35	(25)	(\$20,534)
A-Angioplasties	0	0	\$0.00	0	0	\$0.00	0	\$0
TOTAL HOSPITAL	0	\$26	\$0.00	54	\$39,153	\$725.06	(54)	(\$39,128)
% of Total	0.00%	0.78%		11.89%	46.29%		12.19%	48.13%
TOTAL MONTH	11	\$3,289	\$299.03	454	\$84,590	\$186.32	(443)	(\$81,300)
LESS ADJUSTMENTS		-15,068			-32,088			\$17,021
TOTAL ADJ. CHARGES		(\$11,778)			\$52,502			(\$64,280)

PROTECTED MATERIALS

00108

BOISE HEART CLINIC PLLC  
PHYSICIANS PRODUCTION REPORT  
YTD ENDING 12-31-08 & THE MONTH OF SEPTEMBER 2008

DAVID F. OAKES, M.D.

	YTD 2008			YTD 2007			PROCEDURE	AMOUNT
	PROC.	CHARGES	AVERAGE	PROC.	CHARGES	AVERAGE	INCREASE (DECREASE)	INCREASE (DECREASE)
OFFICE:								
L-Lab.	1,449	14,191	\$9.79	1,103	21,330	\$19.36	346	(\$7,160)
X-X-ray	27	1,660	\$61.47	34	2,182	\$64.19	(7)	(\$523)
O-Office	1,103	103,549	\$93.88	1,232	125,362	\$101.75	(129)	(\$21,812)
I-Injections	11	172	\$15.60	10	378	\$37.83	1	(\$207)
I-I.V.s	1	4	\$4.00	7	21	\$3.00	(6)	(\$17)
E-EKGs	582	53,429	\$91.80	671	60,871	\$90.72	(89)	(\$7,442)
T-Treadmills	73	16,853	\$230.86	151	35,619	\$235.88	(78)	(\$18,766)
M-Holters	20	5,926	\$296.29	29	11,688	\$403.02	(9)	(\$5,762)
N-Nuclear Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
D-Drug Studies	0	0	\$0.00	90	7,759	\$86.21	(90)	(\$7,759)
K - ECPs	0	0	\$0.00	0	0	\$0.00	0	\$0
J-Echos	165	44,264	\$268.27	344	96,203	\$279.66	(179)	(\$51,939)
R-Reports	21	600	\$28.57	20	747	\$37.33	1	(\$147)
B-Hon.&Prof.Fees	19	44,735	\$2,354.48	31	50,768	\$1,637.68	(12)	(\$6,033)
C-Misc.&N-H Health	30	3,575	\$119.17	33	3,903	\$118.27	(3)	(\$328)
TOTAL OFFICE	3,501	\$288,937	\$82.54	3,755	\$416,851	\$111.01	(254)	(\$127,894)
% of Total	83.96%	45.98%		81.52%	50.02%		2.43%	-4.04%
HOSPITAL:								
P-Pacemakers	95	79,203	\$833.71	99	104,442	\$1,054.97	(4)	(\$25,239)
H-Hospital	269	57,570	\$214.01	328	68,796	\$209.74	(59)	(\$11,226)
S-Studies	286	158,757	\$555.09	398	193,424	\$485.99	(112)	(\$34,667)
A-Angioplasties	19	43,944	\$2,312.82	26	49,897	\$1,919.12	(7)	(\$5,954)
TOTAL HOSPITAL	669	\$339,473	\$507.43	851	\$416,559	\$489.49	(182)	(\$77,085)
% of Total	16.04%	54.02%		18.48%	49.98%		-2.43%	4.04%
TOTAL YTD	4,170	\$628,430	\$150.70	4,606	\$833,410	\$180.94	(436)	(\$204,979)
LESS ADJUSTMENTS		-240,152			-284,560			\$44,408
TOTAL ADJ. CHARGES		\$388,279			\$548,850			(\$160,571)

	Sep-08			Sep-07			PROCEDURE	AMOUNT
	PROC.	CHARGES	AVERAGE	PROC.	CHARGES	AVERAGE	INCREASE (DECREASE)	INCREASE (DECREASE)
OFFICE:								
L-Lab.	0	0	\$0.00	99	1,734	\$17.52	(99)	(\$1,734)
X-X-ray	0	0	\$0.00	1	113	\$113.00	(1)	(\$113)
O-Office	0	0	\$0.00	114	11,809	\$103.59	(114)	(\$11,809)
I-Injections	0	0	\$0.00	4	59	\$14.77	(4)	(\$59)
I-I.V.s	0	0	\$0.00	0	0	\$0.00	0	\$0
E-EKGs	-1	-20	\$20.30	86	8,226	\$95.65	(87)	(\$8,246)
T-Treadmills	0	0	\$0.00	14	4,056	\$289.72	(14)	(\$4,056)
M-Holters	0	0	\$0.00	5	1,867	\$373.32	(5)	(\$1,867)
N-Nuclear Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
D-Drug Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
K - ECPs	0	0	\$0.00	0	0	\$0.00	0	\$0
J-Echos	0	0	\$0.00	32	9,242	\$288.80	(32)	(\$9,242)
R-Reports	3	45	\$15.00	1	50	\$50.00	2	(\$5)
B-Hon.&Prof.Fees	0	0	\$0.00	2	3,435	\$1,717.47	(2)	(\$3,435)
C-Misc.&N-H Health	1	100	\$100.00	2	200	\$100.00	(1)	(\$100)
TOTAL OFFICE	3	\$125	\$41.57	360	\$40,790	\$113.31	(357)	(\$40,666)
% of Total	100.00%	100.00%		90.68%	100.00%		90.61%	56.19%
HOSPITAL:								
P-Pacemakers	0	0	\$0.00	6	9,650	\$0.00	0	(\$9,650)
H-Hospital	0	0	\$0.00	25	7,844	\$313.76	(25)	(\$7,844)
S-Studies	0	0	\$0.00	12	14,213	\$1,184.44	(12)	(\$14,213)
A-Angioplasties	0	0	\$0.00	0	0	\$0.00	0	\$0
TOTAL HOSPITAL	0	\$0	\$0.00	37	\$31,707	\$856.95	(37)	(\$31,707)
% of Total	0.00%	0.00%		9.32%	43.74%		9.39%	43.81%
TOTAL MONTH	3	\$125	\$41.57	397	\$72,497	\$182.61	(394)	(\$72,373)
LESS ADJUSTMENTS		\$,061			-22,538			\$27,599
TOTAL ADJ. CHARGES		\$5,186			\$49,959			(\$44,773)

TECTED MATERIALS

BH0000101

00109

ROISE HEART CLINIC PLLC  
PHYSICIANS PRODUCTION REPORT  
YTD ENDING 12-31-08 & THE MONTH OF OCTOBER 2008

DAVID F. OAKES, M.D.

	YTD 2008			YTD 2007			PROCEDURE	AMOUNT
	PROC.	CHARGES	AVERAGE	PROC.	CHARGES	AVERAGE	INCREASE (DECREASE)	INCREASE (DECREASE)
OFFICE								
L-Lab	1,449	14,191	\$9.79	1,209	23,307	\$19.28	240	(\$9,116)
X-X-ray	27	1,660	\$61.47	37	2,356	\$63.67	(10)	(\$696)
O-Office	1,103	103,549	\$93.88	1,395	141,024	\$101.09	(292)	(\$37,474)
I-Injections	11	172	\$15.60	74	1,435	\$19.40	(63)	(\$1,264)
I-I.V.s	1	4	\$4.00	7	21	\$3.00	(6)	(\$17)
E-EKGs	582	53,429	\$91.80	748	67,244	\$89.90	(166)	(\$13,815)
T-Treadmills	73	16,853	\$230.86	163	38,893	\$238.60	(90)	(\$22,040)
M-Hollers	20	5,926	\$296.29	34	13,537	\$398.14	(14)	(\$7,611)
N-Nuclear Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
D-Drug Studies	0	0	\$0.00	90	7,759	\$86.21	(90)	(\$7,759)
K - ECPs	0	0	\$0.00	0	0	\$0.00	0	\$0
J-Echos	165	44,264	\$268.27	386	105,687	\$273.80	(221)	(\$61,423)
R-Reports	22	650	\$29.55	20	747	\$37.33	2	(\$97)
B-Hon.&Prof.Fees	20	46,559	\$2,327.93	33	61,634	\$1,867.69	(13)	(\$15,075)
C-Misc.&N-H.Health	35	4,025	\$115.01	39	4,584	\$117.54	(4)	(\$559)
TOTAL OFFICE	3,508	\$291,281	\$83.03	4,235	\$468,227	\$110.56	(727)	(\$176,946)
% of Total	83.98%	46.18%		82.19%	50.49%		1.80%	-4.31%
HOSPITAL:								
P-Pacemakers	95	79,203	\$833.71	112	120,047	\$1,071.84	(17)	(\$40,844)
H-Hospital	269	57,570	\$214.01	362	76,398	\$211.04	(93)	(\$18,828)
S-Studies	286	158,757	\$555.09	417	210,094	\$503.82	(131)	(\$51,337)
A-Angioplasties	19	43,944	\$2,312.82	27	52,554	\$1,946.45	(8)	(\$8,611)
TOTAL HOSPITAL	669	\$339,473	\$507.43	918	\$459,093	\$500.10	(249)	(\$119,620)
% of Total	16.02%	53.82%		17.81%	49.51%		-1.80%	4.31%
TOTAL YTD	4,177	\$630,754	\$151.01	5,153	\$927,320	\$179.96	(976)	(\$296,566)
LESS ADJUSTMENTS		-241,721			-308,692			\$66,971
TOTAL ADJ. CHARGES		\$389,033			\$618,628			(\$229,595)

	Oct-08			Oct-07			PROCEDURE	AMOUNT
	PROC.	CHARGES	AVERAGE	PROC.	CHARGES	AVERAGE	INCREASE (DECREASE)	INCREASE (DECREASE)
OFFICE								
L-Lab	0	0	\$0.00	9	167	\$18.55	(9)	(\$167)
X-X-ray	0	0	\$0.00	0	0	\$0.00	0	\$0
O-Office	0	0	\$0.00	4	72	\$18.04	(4)	(\$72)
I-Injections	0	0	\$0.00	0	0	\$0.00	0	\$0
I-I.V.s	0	0	\$0.00	0	0	\$0.00	0	\$0
E-EKGs	0	0	\$0.00	0	0	\$0.00	0	\$0
T-Treadmills	0	0	\$0.00	0	0	\$0.00	0	\$0
M-Hollers	0	0	\$0.00	0	0	\$0.00	0	\$0
N-Nuclear Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
D-Drug Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
K - ECPs	0	0	\$0.00	0	0	\$0.00	0	\$0
J-Echos	0	0	\$0.00	0	0	\$0.00	0	\$0
R-Reports	1	50	\$50.00	0	0	\$0.00	1	\$50
B-Hon.&Prof.Fees	1	1,823	\$1,823.41	0	0	\$0.00	1	\$1,823
C-Misc.&N-H.Health	5	450	\$90.00	0	0	\$0.00	5	\$450
TOTAL OFFICE	7	\$2,323	\$331.92	13	\$239	\$18.39	(6)	\$2,084
% of Total	100.00%	100.00%		100.00%	100.00%		100.00%	100.00%
HOSPITAL:								
P-Pacemakers	0	0	\$0.00	0	0	\$0.00	0	\$0
H-Hospital	0	0	\$0.00	0	0	\$0.00	0	\$0
S-Studies	0	0	\$0.00	0	0	\$0.00	0	\$0
A-Angioplasties	0	0	\$0.00	0	0	\$0.00	0	\$0
TOTAL HOSPITAL	0	\$0	\$0.00	0	\$0	\$0.00	0	\$0
% of Total	0.00%	0.00%		0.00%	0.00%		0.00%	0.00%
TOTAL MONTH	7	\$2,323	\$331.92	13	\$239	\$18.39	(6)	\$2,084
LESS ADJUSTMENTS		-1,569			-144			(\$1,424)
TOTAL ADJ. CHARGES		\$755			\$95			\$660

PROTECTED MATERIALS

OCT 04 2010  
By J. DAVID M. WARRO, Clerk  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant.

Case No. CV OC 0915341

**JUDGMENT**

THIS MATTER having come before the Court and a jury, and the jury having rendered a verdict on September 21, 2010,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff David F. Oakes, M.D. ("Oakes") shall recover the sum of \$2,043.92 from Defendant Boise Heart Clinic, PLLC ("Boise Heart Clinic");
2. Neither party is the prevailing party in this action for purposes of costs and attorney fees.

DATED this 4<sup>th</sup> day of October, 2010.

[Signature]  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

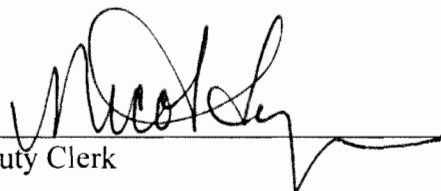
I HEREBY CERTIFY that on the 5<sup>th</sup> day of October, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Dara Labrum  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702

- ☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax No. **342-4455**

Keely E. Duke  
HALL, FARLEY, OBERRECHT &  
BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701

- ☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax No. **395-8585**

  
\_\_\_\_\_  
Deputy Clerk

ORIGINAL

431  
OCT 12 2010  
J. DAVID HALL, JR., CLERK  
BY S. J. J. J.

Thomas A. Banducci (ISB No. 2453)  
*tbanducci@bwslawgroup.com*  
Dara Labrum (ISB No. 7177)  
*dlabrum@bwslawgroup.com*  
BANDUCCI WOODARD SCHWARTZMAN PLLC  
802 West Bannock St., Suite 500  
Boise, ID 83702  
Telephone: (208) 342-4411  
Facsimile: (208) 342-4455

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, MD,

Plaintiff,

v.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant.

Case No. CV OC 0915341

**NOTICE OF APPEAL**

TO: THE ABOVE NAMED RESPONDENT, BOISE HEART CLINIC PHYSICIANS, PLLC, ITS ATTORNEYS HALL, FARLEY, OBERRECHT, & BLANTON, P.A., P.O. BOX 1271 BOISE, ID 83701; AND THE CLERK OF THE ABOVE ENTITLED COURT:

Plaintiff/Appellant David F. Oakes, MD, pursuant to Idaho Appellate Rule 17, hereby gives notice of appeal as follows:

A. **Designation of Appeal:** The above named Appellant David F. Oakes, MD ("Dr. Oakes") appeals against the above named Respondent, Boise Heart Clinic Physicians, PLLC ("Boise Heart Clinic") to the Idaho Supreme Court from the Judgment entered in the

above-entitled action on the 4<sup>th</sup> day of October, 2010 (the Hon. D. Duff McKee, Plan B District Judge). Pursuant to Idaho Appellate Rule 17(e)(1), this Notice of Appeal shall be deemed to include and present on appeal all judgments, orders and decrees entered prior to the order appealed and all orders, judgments or decrees entered after the order appealed.

B.     **Jurisdictional Statement:** Dr. Oakes has the right to appeal to the Idaho Supreme Court the judgments and orders described or incorporated herein pursuant to Idaho Appellate Rule 11(a)(1).

C.     **Preliminary Statement of Issues of Appeal:** The following list of issues on appeal is preliminary in nature and is based upon such preliminary research and legal analysis as could reasonably be conducted to date. Dr. Oakes therefore reserves its right to assert other issues on appeal.

1.     Whether the District Court erred in entering a Judgment holding that Dr. Oakes was not the prevailing party in the action, and therefore failing to award attorney fees and costs.

2.     Whether the District Court erred in entering a Judgment that did not treble the damages under the Idaho Wage Claims Act, Idaho Code § 45-615.

3.     Whether the District Court in entering a Judgment that did not include an award of prejudgment interest.

D.     **Reporter's transcript:** Dr. Oakes requests an entire standard transcript of the trial of this matter, conducted from September 15, 2010, through Tuesday September 21, 2010. Such transcript shall be provided in electronic format.

E.     **Clerk's Record:** Dr. Oakes requests the following documents to be included in the clerk's record in addition to those automatically included under Idaho Appellate Rule 28:

1. Plaintiff's Submission of Proposed Judgment, filed on September 27, 2010, and Proposed Judgment attached thereto.
2. Plaintiff's Memorandum in Support of Treble Damages and Prejudgment Interest, filed on September 27, 2010.
3. Defendant's Opposition to Plaintiff's Memorandum in Support of Treble Damages and Prejudgment Interest, filed on October 1, 2010.
4. A letter sent by attorney Keely Duke to Hon. Ronald Wilper, sent and lodged on or about September 28, 2010.
5. Judgment proposed by Boise Heart Clinic, filed or lodged on September 28, 2010.
6. Jury Instructions and Forms of General Verdict submitted to the jury.
7. The Jury Verdict rendered in this case.

F. Appellant requests that the following documents, charts, or pictures offered or admitted as exhibits be copied and sent to the Supreme Court:

1. Trial exhibit 2
2. Trial exhibit 4
3. Trial exhibit 5
4. Trial exhibit 7
5. Trial exhibit 8
6. Trial exhibit 9
7. Trial exhibit 22
8. Trial exhibit 24
9. Trial exhibit 25



10. Trial exhibit 35
11. Trial exhibit 49
12. Trial exhibit 41A
13. Trial exhibit 101
14. Trial exhibit 105
15. Trial exhibit 106
16. Trial exhibit 107
17. Trial exhibit 109
18. Trial exhibit 122A
19. Trial exhibit 123A
20. Trial exhibit 135
21. Trial exhibit 139
22. Trial exhibit 167
23. Trial exhibit 169
24. Trial exhibit 170
25. Trial exhibit 171
26. Trial exhibit 174
27. Trial exhibit 175
28. Trial exhibit 176
29. Trial exhibit 177
30. Trial exhibit 196

G. I certify:

1. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Tucker & Associates, 605 Fort Street, Boise, ID 83702

2. That the court reporter has been paid the estimated fee for preparation of the reporter's transcript.

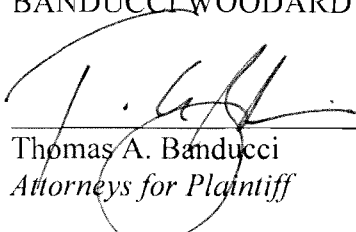
3. That the estimated fee for preparation of the clerk's record has been paid.

4. That the appellate filing fee has been paid.

5. That service has been made upon all parties required to be served pursuant to Rule 20.3250.

DATED this 12 day of October 2010.

BANDUCCI WOODARD SCHWARTZMAN



---

Thomas A. Banducci  
*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

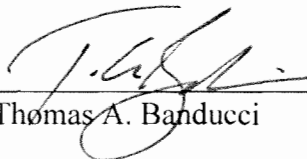
I hereby certify that on this 12 day of October 2010, I caused to be served a true and correct copy of the foregoing document as follows:

Keely Duke  
Hall, Farley, Oberrecht, Blanton  
702 W. Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701

- ☒ U.S. Mail
- ☐ Facsimile (208) 395-8585
- ☐ Hand Delivery
- ☐ Overnight Delivery

Tucker & Associates,  
605 Fort Street,  
Boise, ID 83702

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

  
\_\_\_\_\_  
Thomas A. Banducci

Keely E. Duke  
ISB #6044; [ked@hallfarley.com](mailto:ked@hallfarley.com)  
Kara L. Heikkila  
ISB #8090; [klh@hallfarley.com](mailto:klh@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\44-538\APPEAL\Clerk's Record-BHC-Request for Additional.doc

939  
OCT 25 2010  
J. David Hammond, Clerk  
By L. AMES  
DEPUTY

Attorneys for Defendant/Counterclaimant/Respondent

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff/Counterdefendant/Appellant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant/Counterclaimant/Respondent.

Case No. CV OC 0915341

**REQUEST FOR  
ADDITIONS TO CLERK'S  
RECORD RE: NOTICE OF  
APPEAL**

ORIGINAL

TO: THE ABOVE NAMED PLAINTIFF/COUNTERDEFENDANT/APPELLANT AND ITS ATTORNEY OF RECORD, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN that the Defendant/Counterclaimant/Respondent, Boise Heart Clinic Physicians, PLLC, in the above-entitled proceeding hereby requests, pursuant to Rule 19 of the Idaho Appellate Rules, the inclusion of the following material in the Clerk's Record in addition to that required to be included by the Idaho Appellate Rules and the Notice of Appeal filed October 13, 2010:

REQUEST FOR ADDITIONS TO REPORTER'S TRANSCRIPT AND CLERK'S RECORD RE: NOTICE OF APPEAL - 1

00119

A. Requested additions to the Clerk's Record:

1. Plaintiff's Reply to Defendant's Counterclaim
2. Defendant/Counterclaimant's First Set of Discovery Requests to Plaintiff/Counterdefendant David F. Oakes, M.D.
3. Plaintiff's Responses to Defendant's First Set of Discovery Requests
4. Deposition of Dr. David F. Oakes, M.D.
5. Opposition to Defendant's Motion for Summary Judgment
6. Defendant's Motions *In Limine* Inclusive [1-7]
7. Defendant's Memorandum in Support of Motion *In Limine* Restricting Reference to Damages Outside the Scope of Contract Damages or to Damages Not Disclosed, Motion *In Limine* 6 of 7
8. Affidavit of Counsel in Support of Defendant's Motion *In Limine* [1-7], Inclusive
9. Motion for Directed Verdict on Defendant's Counterclaim
10. Judge's proposed jury instructions and amended, given instructions
11. (Plaintiff's) Submission of Proposed Judgment
12. Memorandum in Support of Treble Damages and Prejudgment Interest
13. Defendant's Opposition to Plaintiff's Memorandum in Support of Treble Damages and Prejudgment
14. (Defendant's Proposed) Judgment

B. I certify that this request for additional record has been served upon the Clerk of the District Court and upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of October, 2010.

HALL, FARLEY, OBERRECHT &  
BLANTON, P.A.

By: Keely E. Duke  
Keely E. Duke - Of the Firm  
Kara Heikkila - Of the Firm  
Attorneys for  
Defendant/Counterclaimant/Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of October, 2010, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Thomas A. Banducci  
Dara Labrum  
BANDUCCI WOODARD SCHWARTZMAN  
PLLC  
802 West Bannock, Ste. 500  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax No. **342-4455**

Keely E. Duke  
Keely E. Duke  
Kara Heikkila

NO. \_\_\_\_\_  
A.M. 8:00 FILED P.M. \_\_\_\_\_

JAN 11 2011

CHRISTOPHER D. RICH, Clerk  
By BRADLEY J. THIES  
DEPUTY

Stephen W. Kenyon  
Clerk of Supreme Court  
451 W State Street  
Boise, Idaho 83720

In re: David F. Oakes v. Boise Heart Clinic Physicians, Docket No.

Notice is hereby given that on Wednesday, November 24, 2010, I lodged a transcript of 874 pages in length for the above-referenced appeal with the district court clerk of Ada County in the Fourth Judicial District.

The following files were lodged:

Covers, Proceeding 09/15/10, Proceeding 09/16/10, Proceeding 09/17/10, Proceeding 09/20/10 and Proceeding 09/21/10

David Cromwell  
Tucker & Associates

cc: kloertscher@idcourts.net  
PDF format of completed files emailed to Supreme Court

00122

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff-Counterdefendant-Appellant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant-Counterclaimant-Respondent.

Supreme Court Case No. 38146

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal. It should be noted, however, that the following exhibits will be retained at the District Court clerk's office and will be made available upon request.

1. Plaintiff's Exhibit 49 – Calculation Sheet Chart.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

2. Opposition To Defendant's Motion For Summary Judgment, filed May 26, 2010.
3. Order Denying Defendant's Motion For Summary Judgment, filed July 19, 2010.
4. Defendant's Motions In Limine Inclusive 1-7, filed August 19, 2010.
5. Affidavit Of Counsel In Support Of Defendant's Motion In Limine 1-7 Inclusive, filed August 19, 2010.
6. Defendant's Memorandum In Support Of Motion In Limine Restricting Reference To Damages Outside Of The Scope Of Contract Damages Or To Damages Not Disclosed, Motion In Limine 6 Of 7, filed August 19, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 11th day of January, 2011.

CHRISTOPHER D. RICH  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk

CERTIFICATE OF EXHIBITS

00123



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Judge McKee /Ric Nelson  
District Judge Clerk

09/16/10

DAVID OAKES,

Plaintiff,

vs.

BOISE HEART CLINIC,

Defendant.

EXHIBIT LIST

Case No.  
CVOC0915341

(JURY TRIAL)

Plaintiffs Counsel:  
Thomas Banducci  
PLAINTIFF'S ATTORNEY

Defendants Counsel:  
Keely Duke  
DEFENSE ATTORNEY

BY	NO.	DESCRIPTION	STATUS	DATE
P	2	Contract/Employment Agreement	Adm	09/15/10
P	4	Dr. Production 06-09	Adm	09/17/10
P	5	DFO Salary Calc 06-08	Adm	09/17/10
P	7	Letter 05/19/08	Adm	09/17/10
P	8	Letter 06/26/08	Adm	09/15/10
P	9	Letter 08/04/08	Adm	09/16/10
P	20	Letter 05/11/09	Pub. Only	09/16/10
P	22	Statements	Adm	09/16/10
P	24	Collections Process	Adm	09/17/10
P	25	Collections Process	Adm	09/17/10
P	35	Min. of Entry 07/15/08	Adm	09/15/10
P	41-A	Mtg Min (Redacted) 10/15/09	Adm	09/17/10
P	46	Letter 05/05/09	Pub. Only	09/16/10
P	48	Mtg. Min 10/15/09	Pub Only	09/17/10
P	49	Calculation Sheet Chart	Adm	09/21/10
D	101	Employment Agreement 01/01/08	Adm	09/15/10
D	102	Employment Agreement 01/01/05	Adm	09/16/10
D	103	Employment Agreement 01/01/01	Adm	09/16/10
D	105	Physician Services Agreement	Adm	09/15/10

D	106	Physician Services Agreement	Adm	09/15/10
D	107	Check 1100209439 12/19/08	Adm	09/15/10
D	109	08/07-07/08 Gainshare Breakdown	Adm	09/20/10
D	122-A	Letter 10/03/08	Adm	09/16/10
D	123-A	Letter 11/18/08	Adm	09/16/10
D	134	Summary of Adjusted Charges	Adm Lust	09/21/10
D	137	02/09-Updated 08-09 Adjusted Chrgs	Pub Only	09/21/10
D	139	07/20/10 Adjusted Charges	Adm	09/21/10
D	141-D	Bonneville Statements to BHC	Pub Only	09/21/10
D	142-A	2007 Phy Prod Report	Pub Only	09/21/10
D	142-B	2008 Phy Prod Report	Pub Only	09/21/10
D	142-C	Jan-Sept 2009 Phy Prod Report	Pub Only	09/21/10
D	142-D	Oct 09-May 10 Phy Prod Report	Pub Only	09/21/10
D	166	Mtg Min 07/15/08	Adm	09/15/10
D	167	Mtg Min 07/17/08	Adm	09/17/10
D	170	Mtg Min 11/20/08	Adm	09/15/10
D	171	Mtg Min 11/25/08	Adm	09/17/10
D	174	Mtg Min 12/23/08	Adm	09/17/10
D	175	Mtg Min 01/31/09	Adm	09/17/10
D	176	Mtg Min 02/06/09	Adm	09/17/10
D	177	Mtg Min 02/12/09	Adm	09/17/10
D	184-A	Complaint 08/11/09	Pub Only	09/21/10
D	196	Letter 03/06/09	Adm	09/16/10
P		Dr. David Oaks Depo	Pub Only	09/16/10
P		Dr. James Smith Depo	Pub Only	09/20/10
P		Cindy Loomer Depo	Pub Only	09/17/10

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff-Counterdefendant-Appellant,  
vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant-Counterclaimant-Respondent.

Supreme Court Case No. 38146

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

THOMAS A. BANDUCCI

ATTORNEY FOR APPELLANT

BOISE, IDAHO

KEELY E. DUKE

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

CHRISTOPHER D. RICH  
Clerk of the District Court

Date of Service: JAN 13 2011

By BRADLEY J. THIES  
Deputy Clerk

CERTIFICATE OF SERVICE

00126

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID F. OAKES, M.D.,

Plaintiff-Counterdefendant-Appellant,

vs.

BOISE HEART CLINIC PHYSICIANS, PLLC,

Defendant-Counterclaimant-Respondent.

Supreme Court Case No. 38146

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 12th day of October, 2010.

CHRISTOPHER D. RICH  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk

CERTIFICATE TO RECORD

00127